

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 706.

**ESSGEE COMPANY OF CHINA AND DAVID SCHRATTER,
PLAINTIFFS IN ERROR AND APPELLANTS,**

vs.

THE UNITED STATES OF AMERICA.

**IN ERROR TO AND APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.**

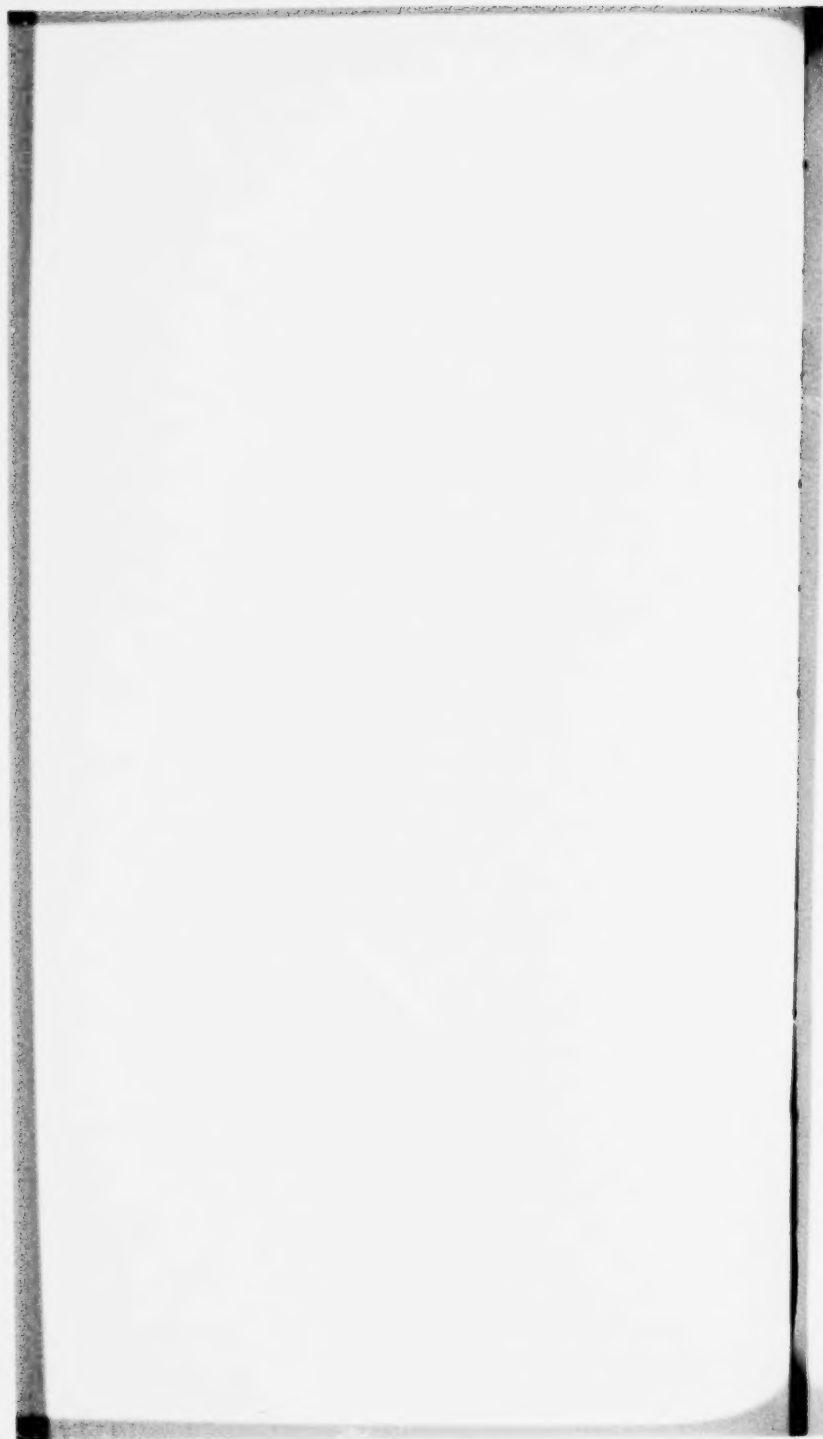
FILED NOVEMBER 22, 1922.

(29,256)



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Citation.**United States of America, ss:**

To Honorable William Hayward, United States Attorney in and for the Southern District of New York, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States in and for the Southern District of New York, wherein Essgee Company of China and David Schratter are plaintiffs-in-error, and the United States of America is defendant-in-error, and also pursuant to an appeal allowed in a certain proceeding wherein Essgee Company of China and David Schratter are plaintiffs-in-error, and United States of America is defendant-in-error, to show cause, if any there be, why the order, decree and judgment rendered against the said plaintiffs-in-error, as in said writ of error and in the petition of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Martin T. Manton, Circuit Judge of the United States for the Second Circuit, this 15th day of September, 1922.

MANTON,
U. S. C. Judge.

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Final Order.

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Courts and Post Office Building in the Borough of Manhattan, City of New York, on September 12, 1922.

Present: Hon. John C. Knox,
United States District Judge.

IN THE MATTER

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of

The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

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This application having duly come on to be heard before this Court on July 10, 1922, and after reading and filing the order to show cause herein dated June 27, 1922; the petition of Essgee Company of China, verified June 27, 1922; the affidavit of David Schratter, verified June 27, 1922; the affidavit of Nathaniel H. Kramer, verified June 27, 1922; the affidavit of Dorothy Karas, verified June 27, 1922; the affidavit of Morris Schratter, verified June 27, 1922, thereto annexed; the affidavits of David Schratter, verified July 10, 1922, and July 20, 1922; the affidavits of Nathaniel H. Kramer, verified July 10, 1922, and July 22, 1922; the affidavit of Morris Schratter, verified July 10, 1922; and the affidavit of Dorothy Karas, verified July 10, 1922; all submitted

in support of the motion; and the affidavits of John M. Williams, verified July 7, 1922, and July 18, 1922; the affidavits of Edward R. Norwood, verified July 7, 1922 and July 18, 1922; the affidavits of Francis A. McGurk, verified July 10th, 1922 and July 18, 1922, and the affidavit of Frank Dow, verified July 7, 1922, all submitted in opposition to said motion; and after hearing Hon. W. M. K. Olcott, of counsel, for the motion, and Francis A. McGurk, Assistant United States Attorney for the Southern District of New York, of counsel, in opposition thereto, and after filing the opinion of the Court, 7

Now, on motion of William Hayward, United States Attorney for the Southern District of New York, it is 8

Ordered, that said motion be, and the same hereby is, in all respects denied.

JNO. C. KNOX,
United States District Judge.

See memorandum endorsed on order entered in the application of Hanclaire Trading Corporation and David Schratter, dated September 12, 1922.

Sept. 12, 1922.

JNO. C. KNOX. 9

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Assignment of Errors.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

11

The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

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The above-named Essgee Company of China and David Schratter having appealed to the Supreme Court of the United States from the judgment and decree and order of this Court entered on the 12th day of Sept., 1922, denying their application for an order to compel the United States Attorney in and for the Southern District of New York to surrender possession to them of books, records and papers in his possession and belonging to them or either of them, make the following assignments of error:

FIRST: The District Court of the United States in and for the Southern District of New York erred in denying the petition of the said Essgee Company of China and David Schratter for an order directing the United States Attorney in and for the Southern District of New York to surrender to them possession of books, records and papers belonging to them or taken from them.

SECOND: The District Court of the United States erred in deciding that Essgee Company of China and David Schratter waived their right to obtain possession of books, records and papers taken from them, or either of them, by their delay in applying for an order to return to them their books, records and papers from October 14th, 1921, until June 27th, 1922. 13

THIRD: The District Court of the United States erred in deciding that Essgee Company of China and David Schratter waived their constitutional guarantee against unreasonable search and seizure by waiting until June 27th, 1922, before they made the application to compel the return of their books, papers and records. 14

FOURTH: The District Court of the United States erred in deciding that to permit the United States Attorney in and for the Southern District of New York to have, retain and use against Essgee Company of China and David Schratter their books, records and papers, would not be a violation of the right assured to them by the 4th and 5th amendments to the Constitution of the United States which protect them and each of them against unreasonable search and seizure of their said books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause. 15

FIFTH: That the District Court of the United States erred in deciding that the use by the United States Attorney before the Grand Jury of the United States of the books, records and papers which were taken from Essgee Company of China and David Schratter in connection with and as a basis of the indictment returned against them, was not a violation of the right assured to Essgee Company of China and

- 16 David Schratter by the 4th and 5th Amendments to the Constitution of the United States which protect them against unreasonable search and seizure of their books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

- 17 SIXTH: The District Court of the United States erred in determining and deciding that the rights guaranteed to Essgee Company of China and David Schratter under the 4th and 5th Amendments to the Constitution of the United States were not violated by the taking by the United States Attorney in and for the Southern District of New York of the books, records and papers which belonged to and were the property of Essgee Company of China and David Schratter.

- 18 SEVENTH: The District Court of the United States erred in its refusal to find and decide and determine that the taking of the books, records and papers, fully described in the original petition of Essgee Company of China and David Schratter, constituted an unreasonable search and seizure of the said books, records and papers and that the said taking of said books, records and papers was in violation of the rights assured to Essgee Company of China and David Schratter by the 4th and 5th amendments to the Constitution of the United States.

Dated, Sept. 14, 1922.

A. A. SILBERBERG,
Solicitor for Essgee Company
of China and David Schratter,
Office & P. O. Address,
No. 256 Broadway,
Manhattan, New York City.

Petition for Writ of Error.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

20

Essgee Company of China and David Schatter, as plaintiffs-in-error, respectfully show:

That they made application to the United States District Court in and for the Southern District of New York for an order and decree directing the United States Attorney in and for the Southern District of New York to deliver to them and to surrender to them possession and custody of certain books, records and papers which were taken from them during October, 1921. That it was the claim and is the claim of Essgee Company of China and David Schatter that certain books, records and papers belonging to them were taken by the United States Attorney and are now held by him without their consent and that the United States Attorney has used the books, records and papers, so taken from them or at least some of them, before the Grand Jury in support of and as a basis for the indictment which

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22 was returned by the Grand Jury sitting in the United States District Court in and for the Southern District of New York against the plaintiffs-in-error. That the said United States Attorney further intends to use the books, records and papers belonging to the plaintiffs-in-error and so taken from them without their consent or permission, upon the trial of the indictment now outstanding against the plaintiffs-in-error.

That the application upon the petition of the plaintiffs-in-error to compel the said United States Attorney to surrender to the plaintiffs-in-error possession of their said books, records and papers was heard by
23 this Court and denied. That the final order, judgment and decree in the proceedings which the plaintiffs-in-error instituted upon their said application is dated September 12, 1922. That the application made by the plaintiffs-in-error to compel the said United States Attorney to give up and surrender to the plaintiffs-in-error their said books, papers and records was based upon the claim that the taking and use by the United States Attorney in and for the Southern District of New York of the said books, records and papers was in violation of the rights and prerogatives of the said Essgee Company of China and David Schratter, plaintiffs-in-error, as guaranteed to them by the Constitution of the United States
24 and the 4th and 5th amendments thereof.

That the plaintiffs-in-error have claimed and now claim that the taking or the use of their said books, records and papers, without their permission and consent, was and constituted an unreasonable search and seizure of their papers and effects which belonged to them, the plaintiffs-in-error, and that the plaintiffs-in-error were by reason of the use of the said books, records and papers before the Grand Jury as a basis

of an indictment against them, compelled in a criminal cause to be witnesses against themselves. 25

That the application which the plaintiffs-in-error made involved the construction and application of the Constitution of the United States and a part and portion thereof.

That Essgee Company of China and David Schratter feel aggrieved by the order and decree dated the 12th day of September, 1922, and submit that the matter is one proper to be reviewed by the Supreme Court of the United States upon writ of error.

Essgee Company of China and David Schratter do now pray that a writ of error be allowed them herein directing the Clerk of the United States District Court in and for the Southern District of New York to send the record and the proceedings herein with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignments of error, herewith filed by the plaintiffs-in-error above named, may be reviewed, and if error found, corrected according to the laws and customs of the United States. 26

Dated, New York, September 14, 1922.

ESSGEE COMPANY OF CHINA and
DAVID SCHRATTER,

Plaintiffs-in-Error.

By A. A. SILBERBERG, 27
Solicitor for Plaintiffs-in-Error,
No. 256 Broadway,
Borough of Manhattan,
New York City.

The foregoing petition is granted and a writ of error allowed as prayed for and the proceedings of the United States Attorney in and for the Southern District of New York in the case wherein United

- 28 States of America is plaintiff, and Essgee Company of China and David Schratter and another are defendants is hereby continued, a bond and undertaking in the sum of \$250 having been filed with the Clerk of this court.

MANTON,
U. S. Circuit Judge.

Writ of Error.

29 UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

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THE PRESIDENT OF THE UNITED STATES TO THE
HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE SOUTHERN
DISTRICT OF NEW YORK:

Because in the record and proceedings as also in the entry of an order, judgment and decree entitled in these proceedings, dated the 12th day of September, 1922, between Essgee Company of China and David

Schratter, plaintiffs-in-error, and United States of America, defendant-in-error, manifest error is alleged to the great damage of the plaintiffs-in-error, and willing that error, if any there be, should be duly corrected and full and speedy justice done, do command you that you send the record and proceedings herein with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct the errors assigned. 31

WITNESS, the Honorable William H. Taft,
Chief Justice of the United States, the
15th day of September, 1922. 32

The foregoing writ is hereby allowed.

MANTON,
U. S. C. Judge.

Alex Gilchrist, Jr.,
Clerk, United States District Court.

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Petition to Appeal and Allowance.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

35

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

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Essgee Company of China and David Schratter feeling aggrieved by the order, decree and judgment of this Court dated September 12, 1922, signed by the Honorable John C. Knox, District Judge, and entered in the office of the Clerk of this Court, come now, by A. A. Silberberg, their solicitor, and hereby appeal from said order, judgment and decree to the Supreme Court of the United States and petition this Court for an order allowing the said Essgee Company of China and David Schratter to prosecute their said appeal at the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record and the proceedings and papers upon which the said order, judgment and decree was made, duly authenticated, may be sent to the said Supreme Court of the United States, and also that an order be made fixing the amount of security the

said Essgee Company of China and David Schratter shall give and furnish upon said appeal, and that upon the giving of said security and undertaking all proceedings on behalf of the United States Attorney in and for the Southern District of New York in a cause now pending wherein the United States of America is plaintiff and Essgee Company of China and David Schratter are defendants, be suspended and stayed until the determination of the said appeal by the Supreme Court of the United States, or until the further order of the Court in the premises. 37

And your petitioners will ever pray.

A. A. SILBERBERG,
Solicitor for Essgee Company of China and David Schratter. 38

The foregoing appeal, as prayed for, is hereby allowed upon the appellants Essgee Company of China and David Schratter filing a bond for \$250, securing the costs of the United States and all proceedings of the United States Attorney in and for the Southern District of New York in the cause now pending in the United States District Court in the Southern District of New York, wherein United States of America is plaintiff and Essgee Company of China and David Schratter and another are defendants, he and the same are hereby suspended and stayed until after the determination and decision by the Supreme Court of the United States of the appeal from the above-mentioned order, judgment and decree. 39

Dated, New York, September 15, 1922.

MANTON,
U. S. C. Judge.

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Order to Show Cause.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

41 The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

Upon the annexed petition of Essgee Company of China, the affidavit of David Schratter, the affidavit of Nathaniel H. Kramer, the affidavit of Morris Schratter, and the affidavit of Dorothy Karas.

42 I direct that William Hayward, Esq., United States Attorney in and for the Southern District of New York, to show cause before this Court at a Stated Term thereof, to be held at the Court House in the Federal Building, in the Borough of Manhattan, City of New York on June 29th, 1922, at 10:30 A. M. of said day or as soon thereafter as counsel can be heard why the prayer of the petitioner above mentioned as made in these proceedings should not be granted, and why the order should not be made forthwith directing the said United States Attorney in and for the Southern District of New York to surrender and return to Essgee Company of China and to David Schratter, all the books, records, papers, letters, cables and memo-

randa set forth and referred to and mentioned in the annexed petition and affidavits, and which said books, records and papers were taken from said David Schratter and Essgee Company of China in the manner and under the circumstances set forth in the annexed papers. 43

Let service of a copy of the annexed petition and affidavits on the United States Attorney in and for the Southern District of New York on or before June 28th, 1922, be deemed sufficient.

Dated, New York, June 27th, 1922.

J. M. MAYER,
U. S. C. J.

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Petition of Essgee Co. of China.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

47 The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

The petition of Essgee Company of China respectfully shows to this Court:

- I. That your petitioner is a corporation organized under the laws of the State of New York, and had at the times hereinafter mentioned its principal place of business at 621 Broadway, in the Borough of Manhattan, in the City and County of New York.
- 48 II. That Essgee Company of China is a citizen of the State of New York and is one of the defendants in this cause.

III. That your petitioner is named as a defendant in an indictment which has been returned by the Grand Jurors for the United States in and for the Southern District of New York and empaneled during the month of May, 1922. The said indictment contains five separate counts. In each of said counts, which are included in the indictment aforesaid, this

petitioner is charged with entering and introducing 49
into the commerce of the United States certain im-
ported merchandise upon a valuation which is claimed
to have been false and fraudulent.

IV. That the said indictment and each of the counts
therein were predicated upon certain evidence and cer-
tain statements and records presented by the United
States Attorney before the grand jurors, who re-
turned and filed the said indictment, and that the rec-
ords, papers and invoices which were so presented to
said grand jurors as a basis of the said indictment, in-
cluding books of this petitioner, were taken from this 50
petitioner and its possession without due process of
law and without its consent and contrary to the laws
of the United States.

V. That this petitioner was, for some time prior
to October 14th, 1921, and up to that time engaged
in business in the City of New York and had its place
of business in rooms 523 and 517 in the building
known as 621 Broadway, in the Borough of Man-
hattan, City of New York, within the Southern Dis-
trict of New York. The petitioner did not do an
interstate business, nor was it engaged in interstate
commerce and that the petitioner's corporate existence
was governed by the laws of the State of New York,
the state under which its charter was obtained and 51
granted.

VI. That petitioner so continued its business, which
consisted of selling and dealing in straw goods and
straw braids and other merchandise up to October
14th, 1921. On that day four persons representing
themselves to be officers of the United States Govern-
ment entered the petitioner's place of business at the
office and address above mentioned, and under the cir-
cumstances following, took from the petitioner and

52 its officials and representatives all its books of account, minute book, invoices, records, papers and memoranda, without lawful process and contrary to the provisions of law and particularly in violation of the guarantees contained and set forth in the Constitution of the United States and the 4th Amendment thereof, and that the said books, records, papers, invoices and memoranda were so used against this petitioner without its consent after the same were so unlawfully seized, as herein detailed, in violation of the Constitution of the United States and the 5th Amendment thereof.

53 VII. The details and circumstances of the taking of the papers, books, records, invoices and memoranda from this petitioner are as follows:

"On October 14th, 1921, four men representing themselves to be officials of the United States Government came into the place of business of this petitioner and asked for Mr. Kramer and also for the codefendant David Schratter. That one of the four men then served Mr. Nathaniel H. Kramer (who was not an officer of this petitioner) with a subpoena *duces tecum* in a proceeding against Hanclore Trading Corporation and not this petitioner, to attend before the grand jury on the same day in the United States District Court in the Southern District of New York.

54 "That Mr. Nathaniel H. Kramer did then and in response to and in keeping with said subpoena collect a bundle of papers, consisting of books of account, minute book, invoices, papers and memoranda and packed the same into a bundle, and he with two of the four officials who came to petitioner's office, as above stated, and the codefendant, David Schratter, went to the Federal Building in the Borough of Manhattan, in the City of New York.

"That when Mr. Kramer arrived at the Federal Building he was escorted to the anteroom where the grand jurors were sitting and was told that the Assistant United States Attorney wanted to talk to him and that his office was on the floor below (the fourth floor) in said building to which Mr. Kramer had then proceeded with the books, records and invoices and papers. One of the men who accompanied Mr. Kramer told him that he should leave the papers with one of the other two men who had come with Mr. Kramer, until Mr. Kramer had talked with the Assistant United States Attorney and had returned to attend before the grand jury.

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"That Mr. Kramer left the papers in the anteroom adjoining the room where the grand jurors were then in session, and went to the private office of one of the Assistant United States Attorneys, and when he came into the office, Mr. Kramer was told that a warrant had been issued for the arrest of said Kramer and also for David Schratter, the co-defendant in this cause. The Assistant United States Attorney told Mr. Kramer to accompany him to the office of United States Commissioner Hitchcock, whose office was also in the Federal Building.

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"That Mr. Kramer immediately demanded a return and surrender of all the papers which he had left in the anteroom adjoining the room in which the grand jurors were in session, and was told that the papers would not be surrendered or delivered or returned to him or to Essgee Company of China to whom the said books, papers and records belonged. Mr. Kramer then protested against the retention of the said books, records, papers and memoranda, but without avail. He was told that the said books, records, papers, invoices and memoranda would be submitted to the grand jury.

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58 "That the said Nathaniel H. Kramer was then held to bail upon a warrant which had been issued for his arrest."

VIII. Petitioner verily believes that the books, records, invoices, papers and memoranda which were taken from Mr. Kramer in the manner outlined above were used before the grand jury in the consideration of the charges which are embraced and included in the indictment returned against this petitioner.

IX. Petitioner never consented to such use nor produced or surrendered voluntarily the said books, papers, records, invoices and memoranda. The afore-
 39 said books, papers, records, memoranda and invoices were produced by Mr. Kramer pursuant to a subpoena *duces tecum* which was served upon him, although he was not an officer of this petitioner.

X. Before Mr. Kramer was called as a witness, or even asked, pursuant to the subpoena so served, to produce any of said papers and before this petitioner had an opportunity to either produce the said books, records, invoices and memoranda or refuse to produce them for any reason, the same were taken from Mr. Kramer under the circumstances above stated and set forth and the same were without authority withheld from said Kramer and this petitioner.

50 XI. In addition to the papers, books and records so taken from Mr. Kramer, petitioner submits that the other two men who came to petitioner's office on October 14th, 1921, as officials of the United States Government, remained at the office of this petitioner at 621 Broadway, in the Borough of Manhattan, City of New York, and raided the offices. These two officers who remained in petitioner's place of business ransacked the offices and desks and files of this peti-

tioner. They took from the desks and files, in the absence of Mr. Schratter, an officer of this petitioner, and a co-defendant, and in the absence of Mr. Kramer, a quantity of books, papers, invoices, records, files, correspondence and cables.

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XII. The only persons who were in the offices of this petitioner at the time when the government officials raided the petitioner's place of business and took from its offices books, papers and records, were petitioner's bookkeeper (a young girl) and one, Morris Schratter, an uncle of the co-defendant.

XIII. The books, papers, invoices, files, correspondence and cables which were taken by the officials in the absence of petitioner's officers, were, petitioner charges, delivered to the United States Attorney in and for the Southern District of New York.

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XIV. Petitioner is unable to state in detail the papers taken. Petitioner, however, charges the fact to be that among and included in the papers taken are the following:

General ledgers, customers ledgers, invoices for merchandise purchased by petitioner, invoices for merchandise shipped to petitioner, letters and cables which passed between petitioner and persons and concerns with which it dealt prior to October, 1921.

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XV. The papers, books, records, letters, invoices and cables, taken by the government officials from the place of business of this petitioner during the absence of petitioner's officers, together with the papers which were taken from Mr. Kramer under the circumstances above stated and set forth, constitute all the books, records, papers, invoices, letters and cables which petitioner had in its business and in connection with the matters and transactions alleged and set forth in the

- 54 indictment returned by the Grand Jurors, above mentioned and set forth.

XVI. The United States Attorney for the Southern District of New York refuses to return any of the said books, records, invoices, letters, cables and papers. All of the said things and property are now unlawfully and improperly held by the United States Attorney. They were seized unlawfully and they were also, petitioner charges the fact to be, used by the United States Attorney in the examination of the matters, things and charges alleged and set forth in the indictment which has been returned against this petitioner.

- 55 XVII. The seizure and taking of the said books, records, invoices, letters, cables, papers and other memoranda was without due process of law and in violation of the protection against unlawful seizure as afforded to this petitioner by the Constitution of the United States and the 4th Amendment thereof, and the use of the said books, records, invoices, letters, cables and papers, and any of them by the United States Attorney before the Grand Jurors, who returned the indictment, and the consideration of the same in connection with the charges contained and set forth in said indictment by the said Grand Jurors, was in violation of the rights of this petitioner as the same are
56 guaranteed by the 5th Amendment of the Constitution of the United States.

XVIII. This petitioner verily believes that the United States Attorney purposes to use and to make further use of the said books, records, invoices, letters, cables, papers and memoranda upon the trial of this cause. Such use will further violate the rights of this petitioner as the same are preserved to it under the Constitution of the United States and the 4th and 5th Amendments thereto.

Wherefore, your petitioner prays that the United States Attorney in and for the Southern District of New York, and all persons acting under him as well as all persons in whose possession the books, records, invoices, letters, cables, papers and memoranda belonging to this petitioner or addressed to this petitioner, may be directed by this Court to deliver the same and all of them forthwith to this petitioner. 67

And this petitioner will ever so pray.

Dated, New York, June 27, 1922.

ESSGEE COMPANY OF CHINA

By DAVID SCHRATTER,
President.

State of New York,
County of New York, ss:

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David Schratter, being duly sworn, deposes and says: That he is the president of Essgee Company of China, the corporation mentioned herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that he is an officer, to wit, the president of Essgee Company of China, which is a domestic corporation, and is familiar with the facts and circumstances herein. 69

The sources of deponent's information and grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Books, papers, records and correspondence belonging to said Essgee Company of China.

DAVID SCHRATTER.

Sworn to before me this

27 day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

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Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

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The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and says: That he is a citizen of the United States of America and is a resident of the City of New York, in the State of New York.

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That deponent was on October 14th, 1921, and now is the president of Essgee Company of China. Deponent joins in the application which Essgee Company of China is making for a return of books, papers, records, letters, cables, invoices and other memoranda taken from it under the circumstances set forth in the formal petition of said company and also makes this application on his own behalf as a defendant for the return of those papers and also a return of further individual papers hereinafter more fully detailed and set forth, which were, in addition to the papers of Essgee Company of China, taken from this de-

ponent without lawful process and without right in law and in violation of the guarantee against unlawful seizure as the same is safeguarded to deponent by the Constitution of the United States and the 4th and 5th amendments thereto.

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On October 14th, 1921, and for some time prior thereto deponent was engaged in business individually and also as president of Essgee Company of China, a co-defendant in the indictment heretofore returned and made his offices at the offices of Essgee Company of China, in Rooms 523 and 517 of 621 Broadway, Manhattan Borough, New York City. Deponent kept his personal books, records, papers, letters, documents, invoices and memoranda relating to his individual business and also relating to transactions and business in which Essgee Company of China and deponent were interested, in the offices above mentioned.

74

During the morning of October 14th, 1921, four men came into Room 523 in said building. Deponent was present at the time. Mr. Nathaniel H. Kramer was present; Mr. Morris Schratter, who was working for deponent and Essgee Company of China, and Dorothy Karas, bookkeeper, were also present.

The details of what happened and the only paper served, viz, a subpoena, are fully set forth in the petition of Essgee Company of China, and for brevity deponent does not reiterate the same. Deponent, however, adopts and fully reaffirms everything contained in the petition of Essgee Company of China relating to the circumstances under which the books, papers, records, invoices and memoranda belonging to Essgee Company of China were taken and ultimately seized by the United States Attorney. In addition to the books, records and papers and other things of Essgee Company of China the two men who were left behind after deponent and Mr. Kramer went before the

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- 76 Grand Jury, took deponent's individual papers, records, letters, invoices and other memoranda. These also deponent verily believes were delivered to the United States Attorney and were by him, as deponent verily believes, used before the Grand Jurors who heard and who returned the indictment containing the charges involved in this cause.

- As soon as deponent arrived in the Federal Building in the City of New York on October 14th, 1921, deponent was taken by the two government officers to a room which adjoined the room where the Grand Jurors were in session. Deponent was not called as a witness but was told that one of the Assistant United States Attorneys wanted to see him. Deponent accompanied one of the men to the office of one of the United States Attorneys and deponent was there for the first time served with a warrant for deponent's arrest.
- 77

Mr. Kramer was also arrested at the same time. Deponent was then placed under arrest and brought for arraignment before the United States Commissioner. Deponent was held to bail which was duly given and furnished.

- Prior to October 14th, 1921, which was on a Friday, I had arranged passage for Europe and I obtained leave of the Court to leave for Europe the following day (October 15th, 1921). I remained abroad in connection with business matters until June 9th, 1922. While in Europe I learned that I had been indicted jointly with the Essgee Company of China upon the charge that I and the Essgee Company of China violated the laws of the United States relating to introducing into the commerce of the United States goods contrary to the provisions of law. I pleaded not guilty to the charges contained in the indictment on June 12th, 1922, and also entered a plea on behalf of the Essgee Company of China on June 19th, 1922, of not guilty.
- 78

I have learned from the employees of Essgee Company of China the details of what the two officers who remained in the place of business of the defendant company did. Their affidavits are submitted herewith. All of the books, records, papers, invoices, correspondence and memoranda belonging to both of the defendants have been delivered to the United States Attorney. Deponent charges the fact to be that the United States Attorney for the Southern District of New York now has the same in his possession and that the said books, papers, records, invoices, letters, cables and memoranda belonging to the defendants and each of them or either of them, obtained in the manner outlined in the annexed petition and other affidavits, were used by the United States Attorney in the submission of the charge embraced within the indictment before the Grand Jurors who returned the said indictment.

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Deponent is unable to give a detailed list of the papers, books and records which belonged to this deponent, nor those which belonged to the defendant company. Deponent, however, maintains and charges that all of the books which consist of general ledgers, customers' ledgers, minute book, invoices for merchandise shipped to deponent or to the defendant company, letters and cables which passed between deponent and certain individuals and firms in European countries, or which passed between the defendants and others in foreign countries, were all obtained illegally and were used as a means of incriminating deponent and the defendant company. The United States Attorney in and for the Southern District of New York now holds all of the foregoing books, papers, records, invoices, letters and cables illegally and has refused to return the same.

81

Deponent verily believes that the United States attorney purposes to use the books, papers, records, files,

82 correspondence and cables, so seized as above and in the annexed petition and affidavits set forth, upon the trial of the charges enumerated and set forth in the indictment returned as above stated, and that by reason of the premises and by reason of all the facts set forth and stated in the papers submitted herewith, the rights of deponent and the rights of defendant company, as guaranteed to them and to each of them under the Constitution of the United States and the 5th and 4th amendments thereto, have been violated.

Wherefore, your deponent prays that the United States Attorney and all persons acting under him, who may have any of the books, records, papers, correspondence, letters, cables and invoices belonging to this deponent or to the Essgee Company of China, return the same.

DAVID SCHRATTER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

Affidavit of Nathaniel H. Kramer.

85

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

86

City & County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes and says: That in October, 1921, he was employed by Hanclore Trading Corporation. Deponent was so employed on October 14, 1921, and was then an officer, to wit, the vice president of the Hanclore Trading Corporation. Deponent was on October 14, 1921, neither an officer or director of Essgee Company of China.

87

During the morning of October 14, 1921, four men entered the office of Essgee Company of China in the building known as 621 Broadway, Manhattan Borough, New York City. One of the four asked for deponent and Mr. David Schratter. Deponent was in the office at the time and was told by the spokesman for the four men that they were United States Government officers. Deponent was then served with a subpoena by the same man in a proceeding entitled

- 88 against Hanclore Trading Corporation. This last-named corporation and Essgee Company of China had offices together in the building above mentioned. The subpoena as deponent recalls it, directed the Hanclore Trading Corporation to produce all its books, papers and records forthwith before the Grand Jury. Deponent collected a large bundle of papers consisting of some of the books, invoices and other papers belonging to the Hanclore Trading Corporation, and personally took the same and with Mr. Schratter and two of the four men, left the office for the Federal Building in the Borough of Manhattan, City of New York. When deponent and Mr. Schratter reached the Federal Building, the two men who represented themselves as government officers, went to the anteroom adjoining the room where the Grand Jurors were then in session. Deponent was not called as a witness pursuant to the subpoena, instead one of the men told deponent that he and Mr. Schratter were wanted by one of the Assistant United States Attorneys, whose office was on the third floor of the Federal Building. Deponent and Mr. Schratter were then in the above-mentioned anteroom on the fourth floor of the Federal Building.
- 89

- 90 Deponent had in his personal possession, all the papers which he had taken from the office, and one of the men requested deponent to hand the bundle of papers to one of the other officers to hold for him until he returned from the office of the Assistant United States Attorney. Deponent and Mr. Schratter proceeded to the office of one of the United States Attorneys, and he was introduced by one of the two men who were at the office of the Essgee Company of China. Deponent was then immediately told by the Assistant United States Attorney that he should go before the United States Commissioner Hitchcock, and

on arriving at the latter's office was told there was a warrant for the arrest of deponent and Mr. David Schratter. The warrant was then served upon deponent and Mr. Schratter and they were declared to be under arrest. Deponent wanted to go back for the papers to the anteroom adjoining the Grand Jury, but was instead ordered to go for arraignment before United States Commissioner Hitchcock in the Federal Building. There the Commissioner held an arraignment of deponent and Mr. Schratter and deponent and Mr. Schratter were held to bail, and the bail was duly furnished. 91

Deponent finally did go back to the anteroom to demand the return of the papers which he had handed to one of the United States officers, and was told that he could not have these papers. Deponent was also then told that the papers would be used before the Grand Jury in due course. Deponent insisted that the papers belong to the Hanclaire Trading Corporation, and deponent as its officer was entitled to the possession of the papers. Return was absolutely denied to him. 92

After bail was furnished by deponent he went back to the office of the Essgee Company of China, and also Hanclaire Trading Corporation, and deponent was informed at the office that two of the four men remained behind after deponent and Mr. Schratter went to attend before the Grand Jury in obedience to the subpoena which had been served, and ransacked all the papers and records of Essgee Company of China, and also Hanclaire Trading Corporation, and had taken from the office two large bundles of books, papers, records, invoices and other memoranda as well as letters and cables belonging to both of the corporations named. No search warrant nor warrant or process of any kind was served upon deponent or Mr. Schratter 93

- 94 or any officer of either the Essgee Company of China or the Hanclaire Trading Corporation for any of said papers or books, except the subpoena which directed the appearance of deponent before the Grand Jury with the books, papers and records of Hanclaire Trading Corporation. The Essgee Company of China was not even mentioned in the subpoena. The only party mentioned was the Hanclaire Trading Corporation. Deponent waived an examination upon the warrant under which he was taken into custody. No examination has ever been held. Instead the United States Attorney proceeded with the examination of charges against Essgee Company of China, Hanclaire Trading Corporation and David Schratter before the Grand Jury.
- 95 Deponent believed that he also was included in the charge which the United States Attorney was presenting to the Grand Jury. Deponent asked the privilege to testify before the Grand Jury. He was accorded that privilege, and the Grand Jury did not include deponent in either the indictment against Essgee Company of China or in the indictment in the cause against Hanclaire Trading Corporation and David Schratter.

- 96 Mr. David Schratter left for Europe on the morning of the 15th of October, 1921, and he returned about June 9th, 1922. Deponent has been told that the papers which were taken from this deponent belonging to Hanclaire Trading Corporation, and also the papers which were taken by the officers belonging to the Essgee Company of China, and also Hanclaire Trading Corporation, including the books, records, invoices, letters and cables of both of said corporations, were used by the United States Attorney in the presentation of the charge as the same was included in the indictment herein or in the indictment against Hanclaire Trading Corporation and David Schratter. Many of the papers taken, deponent was

informed were the personal papers and records and memoranda of David Schratter. Deponent is not now in a position to itemize or specify the particular books, records, papers, letters or cables which were taken from deponent or by the officers in the absence of deponent and Mr. Schratter from the place of business of Essgee Company of China and Hanclore Trading Corporation, but in a general way knows that the books, papers, and records included the ledgers, minute book, invoices, letters and cables. The fact is that both Essgee Company of China and Hanclore Trading Corporation were stripped of all their records, papers, files, letters and cables, and their files left empty. All of these papers, records and books were taken under the circumstances outlined and set forth above. 97 98

NATHANIEL H. KRAMER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

100

Affidavit of Dorothy Karas.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

101

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

State of New York,
County of New York, ss:

102

Dorothy Karas, being duly sworn, deposes and says: On October 14th, 1921, I was employed by Essgee Company of China as a bookkeeper and general filing and office clerk. I did my work at the offices of Essgee Company of China at 621 Broadway, Manhattan Borough, New York City, in Rooms 523 and 517 of that building. I had general charge of the books of Essgee Company of China and also general charge of the records, files, correspondence, cables and invoices of said Essgee Company of China.

I remember that during the forenoon of Friday, October 14th, 1921, four men came to the offices of Essgee Company of China in Room 523. Mr. David Schratter, the president of Essgee Company of China and a co-defendant in the indictment heretofore re-

turned, and Mr. Nathaniel H. Kramer were both present. Mr. Morris Schratter and I were also present. One of the four men then stated that they were United States officials and that they had been sent by the United States Attorney and wanted Mr. Schratter and Mr. Kramer to come down to the Post Office Building where the United States Attorney had his office, and to take with them certain papers, the details of which I do not now remember. Mr. Schratter and Mr. Nathaniel H. Kramer left with two of the four men a few minutes later. The other two men remained in the office and without talking to deponent or to Mr. Morris Schratter, who remained in the office, took together the books, records, letters, files, invoices, correspondence and cables of Essgee Company of China. They went through all the papers and examined them. They did not ask deponent nor Mr. Morris Schratter (the only two people who were left at the office) for permission. I was thoroughly frightened and said nothing of objection or otherwise to what the two officers who remained were doing.

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The two men who remained in the office after Mr. Nathaniel H. Kramer and Mr. David Schratter left, searched and examined every bit of record and paper and letter which Essgee Company of China had. They made and continued a thorough search and examination of all the records and papers of Essgee Company of China. They separated and set aside (and this I personally saw) a large number of invoices, cables, letters and memoranda. They also examined the general ledger and other books of Essgee Company of China. A large number of invoices, cables, letters, papers and books, as well as files, were set aside by the two men and they farther went into the adjoining room known as Room 517, and took together papers, books, records, invoices, letters and cables which were

105

106 contained in that room. Here in this room (Room 517) they also set aside a large quantity of invoices, letters, books, records and cables relating to the business of Essgee Company of China. They packed the books, papers, records, invoices, cables and memoranda into bundles and carried them away.

The papers and memoranda and letters which these two men left were few and of no importance. The two men remained in the offices about three hours and devoted themselves during that time to the examination and setting aside of the books, papers, records and invoices which were kept in the offices of Essgee Company of China.

107

DOROTHY KARAS.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

108

Affidavit of Morris Schratter.

109

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

110

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says: In October, 1921, I was employed as general assistant in the office of Essgee Company of China. I was present when four men came into the office of Essgee Company of China on October 14th, 1921, and remember what transpired at that time.

I have read the affidavit of Dorothy Karas, the bookkeeper and filing clerk, and reiterate her statements with the same force and effect as if the same were incorporated by me at length in this affidavit. I do not repeat the exact occurrences and statements contained in Miss Karas's affidavit because my recollection coincides fully with what Miss Karas says upon the subject. The facts detailed in the affidavit of Miss Karas are affirmed by me in detail.

111

112 I did at one point, while the two men who remained after Mr. Kramer and Mr. David Schratter left, ask them whether they had any warrant or order from the Court permitting them to take the papers. They told me that a paper had been served upon Mr. Kramer and that they were Government officers and had a perfect right to do what they were doing without any further papers.

The two men who remained after Mr. Kramer and Mr. David Schratter left the offices, carried off and took with them two large bundles of books, papers, records, memoranda, invoices and letters belonging to Essgee Company of China and also to Hanclaire Trading Corporation.

113

MORRIS SCHRATTER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

114

Opposing Affidavit of Francis A. McGurk.

115

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

116

County of New York,
Southern District of New York, ss:

Francis A. McGurk, being duly sworn, says:

That he is an assistant to the United States Attorney for the Southern District of New York and has charge of this action.

Deponent has read over the moving affidavits submitted upon this application and is familiar therewith.

Upon information and belief deponent alleges that no subpoena *ad testificandum* was issued to any individual connected with any of the corporations involved in this proceeding, and that the only subpoenas issued were two subpoenas *duces tecum* addressed to the Hanclore Trading Corporation and the Essgee Company of China, Inc., returnable before United States Grand Jury in this district on October 14, 1921, and to the original subpoenas deponent begs leave to refer to the arguments of this motion.

117

118 That Nathaniel Kramer was never subpoenaed or called by the Government as a witness, but said Kramer came to deponent on various occasions while the Grand Jury was investigating the cases out of which this application arises and literally implored deponent to permit him to appear before the Grand Jury, stating among other things that he was willing to waive immunity.

In the course of these interviews with deponent, said Kramer volunteered to become a witness for the Government in its pursuit of Schratter, Zadek, the Essgee Company of China, Inc., and the Hanclore Trading Corporation.

119 While deponent was in the Grand Jury room presenting the case to the Grand Jury, he was frequently called therefrom by Louis S. Posner, who stated he was counsel to the two corporations involved, and said Posner entreated deponent to permit said Kramer or Schratter to appear before the Grand Jury. Deponent refused the request. Thereafter, said Posner by letter, made the same request directly to the foreman of the Grand Jury, a copy of which letter is annexed hereto, made part hereof and marked Exhibit "A."

120 Finally, in May, 1922, subsequent Grand Juries having continued the investigation begun in October, 1921, after repeated entreaty by said Kramer and Posner, Kramer was allowed to appear before the Grand Jury in his own behalf. On the occasion of his so appearing, said Kramer produced, voluntarily, various records and documents of the corporations and willingly presented them to the Grand Jury for their inspection, consideration and impounding. The records and documents then produced by Kramer had never been the subject of a subpoena nor any form of request from anyone connected with the office of the United States Attorney.

That no demand was ever made by said Schratter, Kramer or Posner, nor anybody, prior to making this application, for the return of the papers now detained, except that said Kramer did ask deponent to return certain documents that had been produced, which said Kramer stated were irrelevant to the issues involved, and thereupon all the papers, etc., were gone over, and deponent is informed by John M. Williams, whose affidavit is annexed, that the papers sought by Kramer were delivered to him. 121

That the sources of deponent's information and the grounds of his belief as to the matters herein stated to be alleged upon information and belief, are the records of this court and the records of the United States Attorney and the United States Marshal for the Southern District of New York. 122

That there is pending with this application a similar one made by the same individuals and by the Hanclaire Trading Corporation. That both applications arose out of the same facts and circumstances and deponent asks that the answering affidavits submitted on this application be deemed as answering the application of the Hanclaire Trading Corporation.

FRANCIS A. MCGURK.

Sworn to before me this
10th day of July, 1922.

Carl Brecher,
Notary Public,
Kings Co.

123

Clerk's No. 496; Reg. No. 3178.
N. Y. Clerk's No. 317; Reg. No. 3340.
Com. expires March 30, 1923.

124

Exhibit "A."

LOUIS S. POSNER
ATTORNEY AND COUNSELLOR AT LAW
15 Broad Street, New York

October 14, 1921.

R. G. White, Esq.,
Foreman Federal Grand Jury,
Post Office Building,
Park Place, New York City.

Dear Sir:

125 There is now in process of presentation to your body, the facts in an alleged violation of the law with respect to under-valuation of certain imports by the Hanclaire Trading Corporation, and more specifically, with reference to two of its officers, Messrs. Schratter and Kramer.

Mr. Kramer is a member of the Bar, in excellent standing, who only recently became identified with the company, and as such officer, cleared some of the merchandise in question. He feels confident, as do I, that he can readily clear himself of these charges, and also clear Mr. Schratter, if he may be permitted to appear before your body, and make an explanation of facts which otherwise might seem condemnatory.

126 An indictment would not only virtually ruin the business of the Hanclaire Trading Corporation, but would gravely, and perhaps permanently, reflect upon the career of Mr. Kramer, regardless of the ultimate outcome of the trial, and in his behalf, I respectfully make this request for permission to appear before you.

I have asked Mr. Kramer to attend at my office on Monday, the 17th inst., ready to respond immediately to any communication which may result from this letter.

I am Sir,

Very respectfully,

L. S. POSNER.

LSP-GR.

Opposing Affidavit of John M. Williams.

127

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

128

County of New York,

Southern District of New York, ss:

John M. Williams, being duly sworn, deposes and says, that he is acting deputy collector of customs of the port and collection district of New York and has read the moving affidavit on this application and is familiar with the contents thereof and the incidents referred to therein.

That on the 14th day of October, 1921, deponent in company with Edward R. Norwood, Frank Dow and Sigmund Neustadt, customs agents, proceeded to the offices of the Essgee Company of China and the Hanclore Trading Corporation, located at 621 Broadway, in the Borough of Manhattan, City of New York.

129

On entering the offices of these companies, deponent with Customs Agent Norwood asked for Mr. Schratter. David Schratter produced himself and was there-

- 130 upon served with two subpoenas *duces tecum*, one running to the Essgee Company of China and the other to the Hanclore Trading Corporation, each calling for the production of various records, pertaining to the purchase and entry of certain merchandise by both corporations during the period January 1, 1915, to October 14, 1921. That at the time these subpoenas were served on David Schratter, he was seated at a table in the offices above mentioned, and opposite him sat Nathaniel Kramer. After said Schratter read the subpoenas which had been served on him, he handed them across the table to said Kramer. Deponent, while talking with said Schratter, had in his hand
- 131 certain entries and invoices and copies of private invoices covering the importation of merchandise by the Hanclore Trading Corporation and the Essgee Company of China into the United States in this district, which merchandise had been entered by both corporations. Deponent showed said Schratter the entries and the invoices attached thereto that he had with him and asked to see the "private invoices" that the corporations had, similar to the ones deponent showed said Schratter. Said Schratter replied that he would gladly show what they had. Deponent gave said Schratter the dates of five invoices with the marks and numbers of the packages covered by them and said Schratter called to a girl in the
- 132 office to bring him all the invoices they had between the dates that deponent had just given him.

In response to said Schratter's request, the girl brought in a number of copies of consular invoices and said Schratter produced a number of similar copies from his desk. Deponent glanced at these copies of consular invoices and informed said Schratter that those were not what he wanted, stating that they had other "private invoices" in their possession

and that those were what was wanted. Said Schratter replied that the copies of consular invoices were all that they had. 133

During this conversation, deponent noticed lying on the table in front of said Schratter, some papers which appeared to be invoices, and he asked said Schratter if he would let deponent examine those papers. To the best of deponent's recollection, Schratter replied that those papers were nothing, but he did state that deponent might examine them. Deponent examined those papers and found that they were "private invoices" and that one of them covered a shipment which was also covered by one of the entries and invoices that deponent had in his hand, corresponding in all respects except as to the prices of the merchandise listed. The prices of the merchandise listed on the invoices that said Schratter had in his possession were higher than upon those attached to the entries in deponent's possession. At this juncture deponent told said Schratter that those were the bills that were wanted to be seen and if there was any more of them about, deponent would like to make an inspection of them. Said Schratter then said, "These are nothing at all. They don't mean anything." Deponent replied that he would like to see all of those kind of bills that the Essgee Company, the Hanclaire Trading Corporation and the Impex Trading Company had, if he had no objection. Said Schratter then said, "You can see everything we have." 134 135

At this juncture deponent noticed that a drawer in the table at which Mr. Schratter sat was open and lying therein there appeared some other invoices similar to the ones that were lying on the top of the table. Deponent remarked with respect to the invoices in the open drawer that they appeared to be

136 similar to the ones Schratter had just given him and stated to said Schratter that he would like to see the ones in the drawer also, as well as any more similar invoices that the corporations above mentioned had. Said Schratter said that he would show him everything and gave deponent the invoices that were in the drawer which were all made out to the Hanclore Trading Corporation. Said Schratter was then asked by deponent if he had any more of these invoices and said Schratter called the young lady in the office and gave her some instructions that deponent did not hear.

137 Deponent then called to the attention of said Schratter the subpoenas that had just been served upon him, and stated to him that deponent and those who were with him did not wish to impose upon said Schratter or his corporations, unnecessary hardship by bringing down all the papers, books and documents that he had in the office, and stated that they would look over the papers and books of the corporations, called for in the subpoena, while they were on the premises, and select what of them would be of interest to the Grand Jury, if such plan was agreeable. Said Schratter replied that that was very nice of deponent and those with him and said he would be very glad to let deponent and those with him examine what they had. Deponent and those accom-
138 panying him selected what was desired, consisting of certain invoices, letters and books, which were put on one side, and at Schratter's direction, an employee wrapped them up in packages. Meantime a taxicab was summoned by said Schratter and the papers were taken to the taxicab by Messrs. Schratter and Kramer and they were accompanied to the United States Grand Jury in this United States Courts and Post Office Building by Customs Agents Norwood and Dow.

Before Messrs. Schratter and Kramer left the offices at 621 Broadway, deponent asked said Schratter where the books and papers of the Essgee Company and the Impex Trading Company were, and he said that they did not have them; that they were put away in an old safe and that he didn't know where the safe was just then. He further stated that whatever books and records they had and were not using in the office, were stored in an outside room. Deponent informed Mr. Schratter that he would be glad to inspect the books and records in the outside room if Mr. Schratter had no objection, whereupon Mr. Schratter gave instructions to a girl in the office to go with deponent and Customs Agent Neustadt into the outside room to examine the books and records there. In the presence of this lady, deponent and Customs Agent Neustadt examined these books and records but found nothing among them pertaining to the Essgee Company of China or the Impex Trading Company, nor did deponent or Customs Agent Neustadt remove anything from this outside room.

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14C

Before said Schratter left, deponent asked him about the files of correspondence of the Hanclore Trading Corporation, the Essgee Company of China and the Impex Trading Company, and asked him if he wanted deponent and those accompanying him to look them over, and whether it would take any length of time. Messrs. Schratter and Kramer were then about to leave the office and Mr. Schratter called to the young lady in the office to let deponent and Customs Agent Neustadt look over all the correspondence they had in the office and to select therefrom and take away with them anything that they desired. Deponent and Customs Agent Neustadt looked over the files of correspondence produced by this young lady, at Mr. Schratter's direction, picked out some

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142 of the correspondence and took it away with them to the United States Attorney's office. All of this correspondence, which has been impounded by the Grand Jury is the business correspondence of the corporations and is not personal correspondence of said Schratter or Kramer. Most of this correspondence deponent has since returned to Mr. Nathaniel Kramer, at his solicitation.

Deponent denies that any papers or documents were taken from the office at 621 Broadway, New York City, without the consent of David Schratter, and avers that said Schratter at the times hereinbefore mentioned, seemed disposed to accede to the wishes of deponent.

143 Deponent denies that the offices at 621 Broadway, New York, were ransacked by deponent or Customs Agent Neustadt, who remained with deponent after the departure of Messrs. Schratter and Kramer to the United States Courts and Post Office Building. Deponent further states that both said Schratter and Kramer were informed before they departed their offices that deponent and said Neustadt would remain behind for the purposes hereinbefore mentioned, whereupon said Schratter enlisted the aid of one of his clerks to facilitate deponent in examining the records which said Schratter had theretofore disclosed, and the said clerk was present during all the times
144 deponent and said Neustadt made the examination of the papers and files placed at their disposal by said Schratter.

So far from any abuses of power, or unlawful searches and seizures being made upon or in the offices aforesaid, or upon said Schratter, deponent annexes hereto and makes a part hereof and marks "Exhibit A," a copy of a letter received by deponent and written to him by Nathaniel Kramer, dated No-

venber 5, 1921, expressing the thanks of said Kramer for the fair and clean manner of the treatment accorded him by deponent. 145

That deponent has never been asked by anyone for the return of any of the papers produced by said Schratter and Kramer, with the exception of certain papers and documents heretofore mentioned, and which deponent did return.

Deponent has been informed at the New York Custom House that Customs Agent Neustadt is now abroad in Germany as a treasury attache, and has been for some time prior to the filing of the motion herein.

JOHN M. WILLIAMS. 146

Sworn to before me, this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg's No. 3340.

Commission expires March 30, 1923.

148

"Exhibit A."

NATHANIEL H. KRAMER

ATTORNEY AT LAW

51 Chambers St.

New York

Tel. Worth 2882

Evening Tel. Orchard 3329

149

November 5, 1921.

Mr. Williams,
Room 248, Post Office Bldg.,
Broadway and Mail St.,
New York City.

Dear Sir:

I take the liberty of enclosing herewith the case numbers of the merchandise in bond belonging to the Hanclaire Trading Corporation in reference to which I spoke to you during the week and which, for reasons stated by me to you, I would like to have cleared if the same is permissible and there is no
150 legal objection to it or that the clearance of these goods will not in any way prejudice the Government's investigation in any manner.

I thank you for fair and clean manner in which I have been treated by you in this matter.

Very respectfully yours,

NATHANIEL H. KRAMER.

NHK/AMH

Opposing Affidavit of Edward R. Norwood. 151

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

152

County of New York,
Southern District of New York, ss:

Edward R. Norwood, being duly sworn, deposes and says that he is a customs agent assigned to the Port of New York.

Deponent has read the affidavit of John M. Williams, submitted on this application, and is familiar with all the transactions set forth therein up to the time the said Schratter and the said Kramer left the offices at 621 Broadway, New York City, to come to the Federal Building, and deponent reaffirms and realleges everything set forth in the affidavit of the said Williams as though more fully and at length averred by deponent in this affidavit. Deponent accompanied the said Kramer and Schratter from the offices at 621 Broadway, New York City, to the Federal Building in New York City.

153

154 Deponent, on said October 14, 1921, was duly deputized by the United States Marshal for the Southern District of New York to serve two subpoenas *duces tecum* upon the Essgee Company of China and the Hanclaire Trading Corporation, and deponent proceeded to the offices of the said corporation, located at 621 Broadway, New York City, in company with John M. Williams and Customs Agents Dow and Neustadt, and there made inquiry for Mr. Schratter, who, upon producing and identifying himself, was served with both subpoenas. Deponent never served the said Kramer with any subpoena.

155 Upon the arrival of deponent and Customs Agent Dow at the Federal Building, in company with the said Kramer and the said Schratter, they came to the Grand Jury room and there the said Kramer and the said Schratter left the records they had brought with them.

Thereafter, deponent took the said Kramer and Schratter to the office of United States Commissioner Hitchcock, where they were placed under arrest upon a complaint made by deponent against the said Kramer and said Schratter, together with one Zadek.

156 At no time was deponent asked by either Kramer or Schratter to return the records brought by said Kramer and said Schratter to the Grand Jury, nor at any time did deponent or those with him ransack or burglarize or in any manner force the said Kramer and said Schratter to deliver to deponent or those accompanying him any records of the Hanclaire Trading Company, the Esgee Company of China, or any personal records of the said Schratter or the said Kramer. As stated in the affidavit of John M. Williams, the said Schratter and the said Kramer were

quite willing to show and to deliver to deponent and to those accompanying him, whatever was asked for. 157

E. R. NORWOOD.

Sworn to before me, this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

Opposing Affidavit of Frank Dow.

158

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

159

County of New York,

Southern District of New York, ss:

Frank Dow, being duly sworn, deposes and says that he is a Customs Agent attached to the Collector of Customs for the Port of New York and is familiar with some of the transactions incident to this application.

160 On the 14th day of October, 1921, deponent, in company with Acting Deputy Collector of Customs John M. Williams and Customs Agents Neustadt and Norwood, proceeded to the office of the Hanclore Trading Corporation and the Essgee Company of China, at 621 Broadway, Borough of Manhattan, in the City of New York, and was present when David Schratter produced the invoices mentioned in the affidavit of John M. Williams, submitted herewith. Deponent recalls that at first said Schratter denied that he had any other invoices besides the copies of the consular invoices mentioned in the affidavit of said Williams. Deponent recalls also that said Williams
161 showed David Schratter a copy of an invoice which he had with him, and thereupon asked said Schratter to produce the invoices which corresponded to the one in his possession. Thereupon the true "private invoices" were produced by said Schratter.

Deponent was present when Schratter wrapped up in bundles, or caused to be wrapped up in bundles, the invoices and books that he produced at the request of said Williams, and deponent recollects distinctly that no seizure was made of any papers by deponent or any of those accompanying him, but that the papers so wrapped up as aforesaid were taken
162 by David Schratter or one of the employees of his company, to the taxicab which was waiting downstairs, to convey them to the Post Office Building, and deponent and Customs Agent Norwood accompanied said Schratter and Kramer to the Post Office Building.

After the taxicab arrived at the Post Office Building, the documents were carried by either Schratter or Kramer to the Grand Jury room and there turned

over to the Assistant United States Attorney in charge 163
of the case.

FRANK DOW.

Sworn to before me, this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1922.

164

Subpoena duces tecum.

THE PRESIDENT OF THE UNITED STATES OF AMERICA
to: Essgee Company of China, Inc., 621 Broad-
way, New York, N. Y. GREETING:

WE COMMAND YOU, that all business and excuses
being laid aside you appear and attend before the
Grand Inquest of the Body of the People of the
United States of America for the Southern District
of New York, at a District Court to be held in Room
426 at the United States Court House and Post
Office Building, Borough of Manhattan, City of New
York, on the 14th day of October, 1921, at eleven
o'clock in the forenoon to testify and give evidence in
regard to an alleged violation of Section 3, paragraph
G, Act of October 3, 1913, and not to depart the
Court without leave thereof or of the District Attor-
ney and that you produce at the time and place afore-
said, the following:

165

(1) The book of minutes, stock book, stock ledger
and records of the corporation of the Essgee Com-
pany of China, Inc.

166 (2) Ledgers, journals, cash books, day books, purchase books, sales books and trial balance books which show correct and actual value of goods, wares and merchandise imported by Essgee Company of China, Inc., from January 1, 1920, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland.

(3) All check books, stubs of check books, cancelled checks, pass books and deposit books of said Essgee Company of China, Inc., and also drafts, cancelled drafts, memoranda of drafts, records of payment of drafts and notices of dishonor of protest of unpaid drafts covering period from the 1st day of January, 1915, down to October 14, 1921.

167 (4) Any and all invoices, debit memoranda, receipts, bills and notes of whatever nature covering charges by Continentale Handels Aktiengesellschaft of Berlin, Germany, on account of importations made to the Essgee Company of China, Inc., and covering charges of whatsoever nature with the said Continentale Handels Aktiengesellschaft, and all other letters, reports, bills, invoices, correspondence and writings of whatsoever nature received between the dates of January 1, 1920, and October 14, 1921, from the aforesaid Continentale Handels Aktiengesellschaft or their agents and employees, or from any other person or persons who, during this period shipped, delivered, consigned or sold merchandise to the Essgee Company of China, Inc., from the aforesaid countries of Germany, France, Italy, Switzerland, China, Japan, England and Holland; and all other letter books containing tissue copies or carbon or other copies kept in loose leaf system and bound together containing copies of all letters, bills, reports, invoices and writings of whatsoever nature, written and sent by Essgee

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Company of China, Inc., to the firms, individuals and corporations hereinbefore in this paragraph named and designated. 169

(5) The private ledger or ledgers, book or books of Essgee Company of China, Inc., showing the data from which annual, semi-annual, quarterly, monthly or any statements were made by it to the firms, individuals and corporations hereinbefore mentioned.

(6) Any and all other private invoices and other invoices including consular invoices, and all debit memoranda and slips which accompany said private invoices and memoranda and which show a correct and actual value of goods, wares and merchandise and the prices paid and agreed to be paid for said goods, wares and merchandise imported by the Essgee Company of China, Inc., from January 1, 1921, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland. 170

(7) Any and all contracts, agreements, undertakings or copies of contracts, agreements, undertakings between the Essgee Company of China, Inc., and the Continentale Handels Aktiengesellschaft between the 1st day of January, 1918, and October 14, 1921, for the purchase or sale of goods, wares and merchandise imported from foreign countries, by the Essgee Company of China, Inc. 171

(8) Any and all contracts, agreements, writings or undertakings and copies thereof between the Essgee Company of China, Inc., and the Hanclore Trading Corporation, the Amgar Corporation and the Impex Trading Company of whatsoever kind and nature covering the period between January 1, 1915, down to October 14, 1921.

- 172 And for failure to attend and produce the aforesaid documents, you will be deemed guilty of a contempt of court and liable to the penalties of the law.

WITNESS, the Hon. Learned Hand, Judge of the United States District Court at the Borough of Manhattan, City of New York, on the 14th day of October, 1921.

ALEX. GILCHRIST, JR.,
Clerk.

William Hayward,
United States Attorney for the
Southern District of New York.

- 173 (Seal.)

Endorsement.

The President of the United States of America To
Essgee Company of China, Inc., 621 Broadway,
New York, N. Y.

Subpoena duces tecum.

Vio. Sec. 3, Par. G, Act of Oct. 3, 1913.

I hereby deputize Edward R. Norwood to serve the
within subpoena.

Oct. 14, 1921.

- 174 THOMAS D. McCARTHY,
U. S. Marshal, S. D. N. Y.

49107

Form No. 302.

I hereby certify, that on the 14 day of Oct., 1921,
at the City of New York, in my district, I personally
served the within subpoena upon the within-named
Essgee Company of China, Inc., 621 Broadway, N.

Y. C., by exhibiting to David Schratter, Pres., at 175
621 B'way, N. Y. C., the within original, and at the
same time leaving with him a copy thereof.

Dated, Oct. 15, 1921.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

E. R. Norwood
Custom Agt.

Replying Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

176

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COM-
PANY OF CHINA and DAVID
SCHRATTER, to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

177

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and
says that he is one of the applicants in these special
proceedings and has joined with the Essgee Company
of China and also in the separate proceedings insti-
tuted on behalf of deponent and Hanclaire Trading

178 Corporation to compel the United States Attorney to return the books, records, papers and letters taken from deponent and said corporations. The fact is that deponent's personal books, records and papers were taken by the government officials from the office of deponent on October 14th, 1921, and that the said papers are now held by the United States Attorney, in and for the Southern District of New York.

Deponent has been told about the affidavits which have been submitted in opposition to the application. Deponent, nevertheless, reiterates the statement in the original petition and in his affidavit and adds positively that at no time did deponent, by word of mouth or by act, authorize or consent to the taking of any books, records or papers belonging to either of said corporations or this deponent by the government officers. The fact is that when the government officers came to the office of said corporations on October 14th, 1921, they did serve a paper which Mr. Kramer told deponent was a subpoena. Deponent knew at the time that Mr. Kramer was a lawyer and for that reason relied upon Mr. Kramer in the matter of the talk with the government officers. Mr. Kramer did most of the talking and pursuant to the mandate of the subpoena, Mr. Kramer did collect a number of papers, books and records belonging to Hanclore Trading Corporation and packed same into a bundle and with deponent and the government officers, proceeded to the Federal Building. Deponent did not participate in or hold any conversations with respect to any particular invoices or any particular papers, or the location of any particular papers, with the government officers.

On October 14th, 1921, when Mr. Kramer left the office, two of the government officers remained be-

hind. What happened during the time when deponent and Mr. Kramer were detained in the Federal Building, is not within deponent's personal knowledge. The facts are stated and set forth in the affidavits of the bookkeeper and Mr. Morris Schratter. 181

Deponent denies that he ever made a statement to Mr. Williams or any other government officer that he was willing that he or any other government officer should look at the books and records of said corporations or which belonged to deponent. Deponent also denies that he made a statement that he had no objection to the inspection by the government officers of other books, records and papers which were in the place of business of said corporations at the time. There was at said time, on October 14th, 1921, no talk about the files of correspondence of the Hanclore Trading Corporation or the Essgee Company of China, or the Impex Trading Company, and at no time did deponent authorize any government officer or Mr. Williams, or any other person, to look through any of said books, records or papers. Deponent gave at no time on October 14th, 1921, any such instructions as are detailed and set forth in Mr. Williams' affidavit. Deponent reiterates affirmatively that every paper, document, letter, invoice, cable or book which the United States Attorney now has and which originally came from the office of said corporations or of this deponent, were originally taken without the consent of this deponent and without his authority, and without the consent and authority of said corporations. Deponent and Mr. Kramer were the only persons in authority in the business of said corporations. It is absolutely untrue that this deponent and Mr. Kramer were informed before they left for the Federal Building with two of the government officers, that the other two government officers would remain 182 183

184 behind for the purpose of examining the books, records and papers of said corporations or which belonged to this deponent. At no time was deponent served with any subpoena or other process calling for his individual books, records or papers. The very first paper which was served was served on Mr. Kramer. That was while deponent was at the office of said corporations. The next paper was so served at the Federal Building and was a warrant for the arrest of this deponent. At the same moment, a like warrant for the arrest of Mr. Kramer was also served. Deponent did not deliver any of the papers of either of said corporations or those which belonged
185 to this deponent, to any Assistant United States Attorney, or anyone in the United States Attorney's office. The fact is that Mr. Kramer had the papers in his personal possession pursuant to the subpoena. He had with him these papers in a bundle which he carried under his arm in the anteroom where the Grand Jury was in session on October 14th, 1921, and gave the same to hold to one of the government officers, after Mr. Kramer was told that this officer wanted to hold them until Mr. Kramer had talked to the Assistant United States Attorney. The facts with regard to this taking are fully set forth in the original papers and deponent, for that reason, does not repeat
186 same herein.

The invoices to which Mr. Williams and the other government officers make reference in the opposing affidavits, and which they call "private invoices," belong to and were the property of this deponent. At no time were they delivered by deponent to anyone. Deponent never surrendered possession of them. They were seized without process against this deponent and against his objection. Deponent had arranged to sail to Europe on October 15th, 1921, and after he was

taken into custody under the warrant issued against him, he obtained leave of the government officers to continue his passage to Europe. Deponent returned on the 9th of June, 1922, and made the application for the return of said papers at the first opportune moment, and as soon as it was possible to have the papers drawn and prepared. 187

DAVID SCHRATTER.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

Commission expires March 30, 1923.

N. Y. Co. Clerk's No. 137; Reg. No. 3136

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189

190 **Replying Affidavit of Nathaniel H. Kramer.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

191 The Application of ESSGEE COM-
PANY OF CHINA and DAVID
SCHRATTER, to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

State of New York,
City of New York, ss:
County of New York,

192 Nathaniel H. Kramer, being duly sworn, deposes
and says: He is an attorney at law, duly admitted
and licensed to practice in all the courts of this state.
That he is now engaged in the practice of law at
No. 51 Chambers Street, Manhattan Borough, New
York City.

During October, 1921, deponent, in addition to the
practice of law, devoted himself to mercantile pur-
suits. He was at that time connected with the Han-
claire Trading Corporation, one of the two corpora-
tions on whose behalf application is being made to
compel the United States Attorney to surrender and
return papers, records and letters seized from the
possession of said corporations.

Deponent well remembers the time when the government officers, including Mr. John M. Williams, came to the office of the said corporations. Deponent takes issue with Mr. Williams and also with the others who are making affidavits in opposition to this application, as to what took place on October 14th, 1921. Deponent is positive that only one subpoena was served and that that subpoena was directed to Hanclaire Trading Corporation. This subpoena was served on deponent and not on Mr. Schratter.

193

The fact is that when Mr. Williams and his associate officers entered the office of the said corporation on October 14, 1921, they asked for papers relating to the entry of certain merchandise by Hanclaire Trading Corporation. Deponent read the subpoena at the time. He, as an attorney, understood the purport and scope of the subpoena and personally collected the papers called for by the subpoena. These papers all related to the Hanclaire Trading Corporation; the Esgee Company of China, was not even considered at the time, and deponent was not in any way interested therewith, and deponent packed the papers so collected into a bundle and with Mr. Schratter and two of the government officers, went in a taxicab to the Federal Building. Deponent had possession of the Hanclaire Trading Corporation papers at the Federal Building and Mr. Schratter did not have any of the papers. Deponent denies that he turned over any papers of the Hanclaire Trading Corporation to the Assistant United States Attorney in charge of the case on October 14th, 1921, or at any other time. In this connection, deponent calls the special attention of the Court to the fact that there is no affidavit from the Assistant United States Attorney who was supposed to have been in charge of this case before the Grand Jury sitting in October,

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195

196 1921; that neither the deponent nor Mr. Schratter turned any papers over to him. Important on this point also is the fact that although the subpoena was served October 14th, 1921, and the Grand Jury convened for that month was then in session, the indictments returned against both of the said corporations were not so returned until May, 1922.

During all the time when deponent was present and the government officers were in the offices of the Essgee Company of China and the Hanclore Trading Corporation on October 14th, 1921, deponent did not hear Mr. David Schratter consent to the taking of any papers by the government officers. No papers
197 were in fact at the time taken by any government officers while deponent and Mr. Schratter were at the office. Deponent did not consent by word of mouth or act, or otherwise, to the taking of any papers on October 14th, 1921, or at any other time.

Deponent did write a letter dated November 5, 1921, addressed to Mr. Williams, but that letter has, however, nothing to do with these proceedings nor with the transactions or matters included in the indictments which have been returned and filed against the above-named corporations and David Schratter.

NATHANIEL H. KRAMER.

Sworn to before me, this
198 10th day of July, 1922.
Alexander Lewis,
Notary Public,
Queens Co. No. 1620.
N. Y. Co. Clerk's No. 127; Reg. No. 3136.
Commission expires March 30, 1923.

Replying Affidavit of Morris Schratter.

199

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

200

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says that he was, on October 14th, 1921, connected with the Essgee Company of China, and Hanclore Trading Corporation. Deponent remembers the happenings of October 14th, 1921; that four government officers entered the place of business of said corporations; that deponent was left behind with Miss Karas after Mr. David Schratter and Mr. Kramer left with two of the government officers. At that time Mr. Kramer had a bundle of papers of Hanclore Trading Corporation under his arm. The two government officers who were left behind searched every book, record, file and paper in the office of said corporations. Deponent did ask, as he has already stated, of said government officers, about their authority.

201

- 202 They told him that they had a right to do what they were doing. The government officers took with them what they wanted, without asking deponent. Deponent and Miss Karas were the only persons left in the office at the time. Deponent did not consent or authorize the taking of any papers. Deponent did not have any authority to do this. Deponent was only a workingman for said corporations. The two officers who were left behind did take away with them several large bundles of papers, books and records of said corporations and also some which belong to Mr. David Schratter. The records of the corporations and Mr. David Schratter were virtually
- 203 stripped by the government officials who were left behind after Mr. Kramer and Mr. Schratter had left.

MORRIS SCHRATTER.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Commission expires March 30, 1923.

Replying Affidavit of Dorothy Karas.

205

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

206

State of New York,
County of New York, ss:

Dorothy Karas, being duly sworn, deposes and says that on October 14th, 1921, she was the only girl employed by the Essgee Company of China and Hanclaire Trading Corporation. Deponent is the person referred to as the young lady in the affidavit of Mr. Williams, about which deponent has been told.

207

Deponent remembers well the happenings of October 14th, 1921. The entry of four men at one time into the office of said corporations and the tone of the talks at the time, and the taking of papers by Mr. Kramer and packing them into a bundle, all tended to impress upon the mind of deponent the exact facts and circumstances which transpired on October 14th, 1921.

- 208 Deponent denies that Mr. David Schratter gave her any directions during that morning to give to any person, the government officers, or others, any papers, records, or books. Deponent also denies that Mr. Schratter, on said day, called to deponent for any particular papers or invoices. Mr. Schratter did not tell deponent on that day or at any other time, to show any of the books, records or papers of said corporations to any of the government officers. Deponent well remembers that Mr. Kramer and Mr. Schratter left the office of said corporations with two of the government officers. The other two government officers remained behind and what they did
- 209 with the books, records and papers which belong to said corporations or Mr. Schratter, is fully set forth in the affidavit which deponent has heretofore made. Deponent repeats that the government officers who remained behind in the office of said corporations, ransacked all the files of said corporations and took away practically all of the books, records and papers which the said corporations had in their business.

DOROTHY KARAS.

Sworn to before me, this
10th day of July, 1922.

Alexander Lewis,
Notary Public,

- 210 Queens Co. No. 1620.
N. Y. Co. Clerk No. 127.

Replying Affidavit of John M. Williams.

211

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

212

County of New York,
Southern District of New York, ss:

John M. Williams, being duly sworn, says:

Deponent reiterates his statement that David Schratter personally told deponent that he could see everything they had. This was said by David Schratter to deponent in Kramer's presence. Deponent never spoke one word to Kramer in the office of the corporation on October 14, 1921.

213

Deponent never saw David Schratter or Kramer before in his life. Deponent never personally met Kramer until he personally came to deponent's office shortly after October 14, 1921, and introduced himself, and commenced telling deponent how unfortunate he had been in becoming involved with such people, and that he did not know anything at all about the

214 details of business of the corporations which were all in Schratter's hands. He further stated that he personally had lost a lot of his own money through his association with Schratter and the Hanclaire Trading Corporation.

Deponent denies that the letter attached to his answering affidavit dated November 5, 1921, from Kramer does not refer to the matters in the case as Kramer states. Deponent never had any other transactions with Kramer, but those connected with the present case. Deponent submits that the letter shows on its face that it refers to the matters under investigation by the Government, which were in this case.

215 Deponent has carefully examined the papers, etc., in the possession of the United States, and now states that all the papers and correspondence taken by deponent and Customs Agent Neustadt were entirely returned to Kramer by deponent at Kramer's own solicitation, on October 19, 1921. Kramer in his letter referred to above, expresses his gratitude for that.

Deponent denies that Morris Schratter was in the "outside room" where the books and papers of the Essgee Company and Impex Trading Company were stored. The only person in that room was the girl sent there by Schratter, and the only things examined by deponent and Neustadt were some books that girl selected for deponent and Neustadt. One or two of these books were inspected, but as deponent could not ascertain whether they were the books of the Essgee and Impex Companies, he spent not more than five minutes in that room. Nothing whatever was removed from the room by deponent or Neustadt. Morris Schratter was never in the private office where the subpoenas were served while deponent was there.

216

Deponent denies that there was anyone in the private office of the corporations, at 621 Broadway, where the subpoenas were served, except the customs officers, Schratter and Kramer and that a girl came in when called for by Schratter to help him locate the papers he was looking for. This private office was off the main or outer office of the corporations, and was entered by deponent and his associates by going through the main or outer office. In this outer or main office, as deponent passed through, there was a man and a girl who showed deponent the books in the "outside room," and who showed deponent at Schratter's direction, the correspondence of the Hanclore Trading Corporation, and the Essgee Company of China. 217 218

Deponent never asked Schratter for any of his private papers or records. The transactions had by deponent were with Schratter and these covered only the private invoices, purchase journals and foreign correspondence of the corporations. Deponent and Neustadt remained on the premises 621 Broadway, for less than a half hour after Schratter and Kramer departed.

Deponent never indicated to Schratter or Kramer that they would be called as witnesses before the Grand Jury. No request was made by deponent or by anyone in deponent's hearing, upon Schratter and Kramer to come to the Federal Building. 219

JOHN M. WILLIAMS.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

220 **Replying Affidavit of Edward R. Norwood.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COM-
PANY OF CHINA and DAVID
SCHRATTER to compel the
221 United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

County of New York,

Southern District of New York, ss:

Edward R. Norwood, being duly sworn, says:

That he has read the replying affidavits of the mov-
ing parties.

222 On the occasion of serving the subpoenas on the
Hanclaire Corporation and the Essgee Company of
China on October 14, 1921, at 621 Broadway, depo-
nent never had any conversation whatever with Morris
Schratter or Dorothy Karas, nor did said Karas or
Schratter have any conversation whatever with de-
ponent.

The transactions had with David Schratter were
had in the private office of the suite of the corpora-
tions at 621 Broadway, and covered a period of one-
half hour, at the end of which deponent left with

Schratter, Kramer and Dow. The entrance to this private office was through an outer office in the same suite, through which deponent and his associates passed to enter the private offices of the corporations. 223

Deponent in passing into the private office had to pass through the outer office in which latter deponent noticed a man and girl. But this man and girl remained in the outer office while deponent and his associates were in the private office with David Schratter and Kramer, who were the only two besides deponent and his brother officers in the private office, which was closed while the transactions enumerated in the answering affidavits were had. The only time Karas was in the private office was when summoned there by David Schratter to bring in the invoices then under discussion. 224

Deponent and his associates were in the offices not longer than a half hour when deponent and Customs Agent Dow left with Schratter and Kramer.

Deponent did not entice or request David Schratter or Kramer to come to the Federal Building, nor in any way indicate to them that they would be called before the Grand Jury or asked to appear as witnesses. Their appearance with the books and papers was entirely unsolicited.

Deponent never served a warrant upon Schratter or Kramer. Upon arrival in the Federal Building Schratter, Kramer, the records and papers and deponent and Customs Agent Dow immediately proceeded to the Grand Jury room where they were met by the Assistant United States Attorney who took the books and records produced. 225

After the records were turned over to the Assistant United States Attorney, deponent and Customs Agent Dow went with Schratter and Kramer, whom depo-

- 226 nent had informed of the warrant in the hands of the United States Commissioner, to the office of the said Commissioner where they were informed of the precise nature of the complaint against them, waived examination and readily procured bail.

E. R. NORWOOD.

Sworn to before me this
18th day of July, 1922.

Carl Brecher,
Notary Public,
Kings County.

Clerk's No. 496; Register's No. 3178.
N. Y. Clerk's No. 317; Reg.'s No. 3340.
Commisison expires March 30, 1923.

227

228

Replying Affidavit of Francis A. McGurk.

229

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

230

County of New York,
Southern District of New York, ss:

Francis A. McGurk, being duly sworn, says: That he has read the replying affidavits of the moving parties.

Replying to the affidavit of Kramer, deponent states that at the time the papers and records were produced in the Grand Jury ante room, deponent was in before the Grand Jury. Upon being informed that the records of the Hanclaire and Essgee Companies had arrived, deponent left the Grand Jury, came into the ante room where Schratter, Kramer and Customs Agents Norwood and Dow were present and was informed by the Customs Agent in the presence of Schratter and Kramer that the records then and there lying on the table had just been produced. There-

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232 upon deponent took all of the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case.

Subsequently deponent was present upon the arraignment of defendants who both waived examination before the United States Commissioner and readily procured bail.

Deponent at no time had any conversation with David Schratter in connection with this case. Said Schratter was never in deponent's office. Said Kramer on October 14, 1921, was not in deponent's office. He came there frequently thereafter seeking to appear before the Grand Jury.

233 Deponent has within the past week, examined the records of the Essgee Company of China in the office of the County Clerk of New York County and finds that there are two unanimous consents of the stockholders of that company on file there, one dated May 12, 1917, and the other dated November 28, 1917, filed March 1, 1918. Both consented to increases to capital stock of the Essgee Company of China. In the first, Kramer is the attorney who prepared it and the notary who took the acknowledgment. In the second, he is the attorney who prepared it and signed it as secretary of the Essgee Company of China, and further, he signs in the last document as being the owner of 50 shares of stock, being half of the stock outstanding at the time of the second unanimous consent to increase the capitalization. Deponent distinctly recalls said Kramer telling deponent subsequent to October 14, 1921, that he was then an officer of the Essgee Company of China, but that said company was virtually dormant, and that its affairs were taken over by the Hanczair Trading Corporation. He further stated that the Essgee Company had not been dis-

234

solved. This fact is in direct contradiction of Kramer's statement in the moving papers that he was not an officer of the Essgee Company on October 14, 1921, but an employee thereof. 235

There are now in the Government's possession, exclusive of the records and papers volunteered by Kramer, the following produced in response to the two subpoenas:

Minute book of the Hancloire Trading Co.

Stock certificate book of the Hancloire Trading Co.

Combined stock and stock ledger of the Hancloire Trading Co.

Two ledgers.

One import sales book.

236

One import book giving a list of importation returns.

One combined sales export and return export book.

One combined purchase journal and purchase return book.

One purchase journal.

The following invoices all covering merchandise shipped by Continentale Handels Atkiengesellschaft, Berlin, Germany, to:

Impex Trading Company, covering the period April, May and June, 1921.

Essgee Company of China covering period September, 1920, and January, February, March and April, 1921.

237

Amjar Corporation, covering period October, November, and December, 1920.

A sheaf of Marconigrams, coded, from Berlin, Germany, addressed to Amjar Corporation during October, November and December, 1920.

Drafts drawn by Continentale Handels Atkienge-

- 238 sellschaft, Berlin, Germany, against Impex Trading Company during May, 1921; against Essgee Company of China, during February, March and April, 1921.

Memo of agreement between Mercier, of Montreal and Hanclaire Trading Company, covering *inter alia*, the fixing of prices of merchandise, dated October 6, 1921. Mercier is the Hanclaire's Canadian representative.

Letter from Mercier to Kramer dated October 7, 1921.

Letter from Capporni & Co., Ltd., Montreal, to Kramer, dated September 29, 1921.

- 239 Personal tax assessment for Morris Schratter and David Schratter by City of New York, for year 1922.

Quadruplicate consular invoices of Essgee Company of China and Impex Trading Company covering February, March, April, May and June, 1921.

These comprise all, and the only papers, records, books, etc., produced in obedience to the subpoenas.

FRANCIS A. MCGURK.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

- 240 N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

Further Affidavit of Nathaniel H. Kramer.

241

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

242

City and County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes and says:

He has read the further affidavits submitted in this proceeding on behalf of the Government verified July 18th, 1922. Deponent notes the statement which Mr. Williams now makes that he, Mr. Williams carefully examined the papers, etc., now in the possession of the United States, and that all the papers and correspondence taken by Mr. Williams and Customs Agent Neustadt were all returned to this deponent on October 19th, 1921. The papers, etc., referred to by Mr. Williams and Mr. Neustadt as having been returned to deponent are the papers, which according to Mr. Williams were taken by him and Mr. Neustadt in the absence of deponent and Mr. Schratter from the office, and while deponent and Mr. Schratter were at the Federal building in obedience to a subpoena which

243

244 had been served, and also while deponent and Mr. Schratter were detained under the warrant of arrest, pending the giving of bail. None of the papers which deponent received on October 19, 1921, from the Government officials included any of the papers or records which deponent and Mr. Schratter took pursuant to the subpoena to the Federal building on October 14, 1921.

Deponent has also read the statement made by Customs Agent Norwood in his affidavit verified July 18th, 1921, that the appearance of deponent and Mr. Schratter with the books and papers was entirely unsolicited. In this statement Mr. Norwood is mistaken, because the fact is that on October 14th, 1921, according to the Government's contention two subpoenas *duces tecum* were served commanding Essgee Company of China and Hanclaire Trading Corporation to appear forthwith with their books, records and papers before the Grand Jury. The appearance with the books and papers was pursuant to the mandate of the subpoena, and was not unsolicited.

Deponent calls the Court's special attention to Mr. Norwood's statement in the same affidavit that when deponent arrived at the Federal building the entire party proceeded to the Grand Jury room, where they were met by the Assistant United States Attorney, who took the books, and records produced. The books and records so produced were produced pursuant to the order and direction of the subpoena. The United States Attorney took the books, records and papers. These books, records and papers were never surrendered by deponent.

Deponent has also read the affidavit of Assistant United States Attorney, and his statement corroborates fully that the books, records and papers were not voluntarily surrendered, but were taken by the United States Attorney. The fact remains that the

books, records and papers which the Government now holds were not surrendered. They were seized after their production was ordered pursuant to a subpoena. No opportunity was ever given to deponent or to Mr. Schratter to challenge the subpoena or to challenge the taking of the books, records and papers. 247

Neither deponent or Mr. Schratter was called as a witness pursuant to the subpoena. The books, records and papers which the Government now concededly has were the papers gotten into the Government building upon the statement that they were called for by the subpoena, and as soon as they were brought to the Federal building, the United States Attorney took them without consultation and without the consent of either the Essgee Company of China or the Hanclaire Trading Corporation, David Schratter or this deponent. 248

The Assistant United States Attorney makes reference to papers in the Government's possession volunteered by this deponent. The only papers which deponent volunteered were papers which deponent produced before the Grand Jury when he testified voluntarily before that body in May, 1922. Those papers consisted of certificates for shares of capital stock of Essgee Company of China, unpaid drafts which belonged to deponent, and also papers which corroborated deponent's contention that deponent was a creditor of David Schratter and Hanclaire Trading Corporation. None of the papers consisted of the records, books, account books, invoices, cables and other papers which are enumerated by the United States Attorney as in his possession, were volunteered by deponent. 249

NATHANIEL H. KRAMER.

Sworn to before me this

22nd day of July, 1922.

Norman Handel,

Com. of Deeds,

N. Y. Co. #167.

250

Further Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

251

City and County of New York, ss:

David Schratter, being duly sworn, deposes and says that he is one of the applicants in this proceeding.

252

He has been told about the further additional affidavits which have been submitted by the Government, all of them verified July 18th, 1922. Depo-
nent has read those affidavits, and now submits to the Court that there is really no issue or substantial difference of fact between the Government and deponent and the two corporations all of the parties to the application in this and the accompanying proceeding as to the taking of the books, records and papers which the Government admits it now has.

Heretofore the books, records and papers were divided under three classifications:

"1. The books, records and papers which were taken from deponent and Mr. Kramer while they were in the Federal building. 253

"2. The books, records and papers which Mr. Williams and Mr. Neustadt took from the office of Essgee Company of China and Hanchaire Trading Corporation, while deponent and Mr. Kramer were absent from the office.

"3. The books, records and papers belonging to deponent individually taken from the office by Mr. Williams and Mr. Neustadt."

Accepting for the moment at full face value, the statements submitted by the Government agents, deponent finds that the papers enumerated above under classification "2" must be eliminated. This elimination is forced by the fact that Mr. Williams in his last affidavit verified July 18th, 1922, swears that he has carefully examined the papers, etc., in the possession of the United States and states that all the papers and correspondence which he and Mr. Neustadt took, were returned to Kramer on October 19, 1922. 254

If Mr. Williams' statement is true that all the papers and correspondence and records which he and Mr. Neustadt took while deponent and Kramer were detained in the Federal building, then the papers which the Government admits it has, cannot include the papers taken by Mr. Williams and Mr. Neustadt. Mr. Williams' statement by its own force, if true, eliminates also the papers included in classification "3" above mentioned. All of the papers, records and books which the Government admits it has, must therefore have been included in the papers, books and records which Kramer brought to the Federal building, pursuant to the command of the subpoena which was served. 255

256 As to the books, records and papers, taken by those parties, pursuant to the direction of the subpoena, Mr. Norwood, one of the Government agents swears that the appearance of deponent and Kramer with the books and papers was entirely unsolicited. Depo-
nent is at a loss to understand how Mr. Norwood can claim that the visit to the Federal building was unsolicited when the fact is that the Government claims that two subpoenas *duces tecum* were served. Those subpoenas according to the Government's con-
257 tention directed the appearance of Hanclore Trading Corporation and Essgee Company of China forth-
with before the Grand Jury with their books, rec-
ords and papers. The appearance with the books, records and papers on October 14, 1921, was in fact in obedience to the command of the subpoena which was served and was not unsolicited.

Mr. Norwood also stated that upon arrival in the building, deponent and Kramer with the records and papers and Mr. Norwood and Mr. Dow, proceeded to the Grand Jury room where they were met by the Assistant United States Attorney, who took the books and records produced.

258 The Assistant United States Attorney sets forth his version of what occurred with regard to the papers, records and books which deponent and Kramer produced pursuant to the subpoena. He states that at the time the papers and records were produced in the Grand Jury ante room, he was before the Grand Jury. He was told that the records of the Hanclore Trading Corporation had arrived, and also that the papers of the Essgee Company of China had arrived. He left the Grand Jury room and came into the ante room. He was informed by the customs agents that the records lying on the table had been produced. Mr. McGurk adds that "thereupon deponent took all of

the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case." 259

The Assistant United States Attorney according to his own statement was informed by the customs agent that the records were lying on the table in the ante room, adjoining the room where the Grand Jury was in session. The Assistant United States Attorney asked no questions. He did not ask deponent's permission nor Mr. Kramer's to take the papers and he says that Grand Jury impounded them.

Deponent has been advised that this taking in and of itself, even under the circumstances set forth in the papers submitted for the Government, constitute an unreasonable search and seizure of the books, records and papers involved in this proceeding. There is no denial anywhere, even in this last batch of affidavits submitted for the Government that Mr. Kramer made a demand for the return of the books, records and papers from the customs agents with whom he left them while he went to attend on the arraignment under the warrant for his arrest. Mr. Kramer did make the demand on October 14, 1921, for the return of the papers and was told that he could not have them. Irrespective of what transpired in the office of the Essgee Company of China when the four customs agents were present; irrespective also of what happened when two of the customs agents remained in the office of Essgee Company of China, after deponent and Mr. Kramer went to the Federal building, the facts admitted by the Government establish that the papers which Mr. Williams and Mr. Neustadt took from the office of the corporations involved in these proceedings, were returned. The papers which the Government now has are therefor, the papers which deponent and Mr. Kramer produced 260 261

262 pursuant to the command of the subpoena duly served.

Neither deponent nor Mr. Kramer were called pursuant to the subpoena; neither deponent nor Mr. Kramer was given an opportunity to produce the books before the Grand Jury; neither deponent nor Mr. Kramer was given an opportunity to assert any right or prerogative which they have in law with respect to their books, records and papers. As soon as the books, records and papers which the Government now has were brought into the Federal building, they were placed upon a table in the room near the room where the Grand Jury was in session, and the Assistant United States Attorney, took all of them. He so took

263 them with him into the Grand Jury. The Grand Jury impounded them according to the Government's contention, and this taking, is, deponent repeats, against the violation of the guarantee against unreasonable search and seizure extended to deponent and to the Essgee Company of China and the Hanchaire Trading Corporation by the Constitution of the United States.

DAVID SCHRATTER.

Sworn to before me this

20th day of July, 1922.

E. J. Sichel,

Com. of Deeds,

N. Y. Co. #273.

264

Opinion and Decision by J. Knox.

265

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

ESSGEE COMPANY OF CHINA, Inc.,
and DAVID SCHIRATTER to com-
pel the United States Attorney
for the Southern District of
New York, to return certain
books, papers, records, etc.

266

Louis S. Posner, attorney for petitioners (Hon.
Wm. M. K. Olcott, Abra. A. Silberberg of counsel).

William Hayward, United States Attorney, for
the Government (Francis A. McGurk, Assistant
United States Attorney, of counsel).

KNOX, D. J.:

That the papers of a corporation, as well as those
of an individual, are immune from unlawful searches
and seizures, is a proposition established beyond cavil;
and, it is also one which this Court has no wish to im-
pair. Such papers, are, however, subject to pro-
duction in a proper case by writ of subpoena, *Hale v.*
Henkel, 201 U. S. 43.

267

Upon this proceeding, the record shows that two
subpoenas, one addressed to Hanclore Trading Cor-
poration, and the other to Essgee Company of China,
Inc., each calling for the production of certain books,

268 and papers before the Grand Jury, were served upon David Schratter, as president of both corporations, at the office where the said concerns carried on business, upon October 15, 1921.

In response to the subpoenas, or at least to one of them, certain papers were gathered together by one Kramer, vice president of the Hanclore Trading Company, in the presence of Schratter, and were taken by Kramer, accompanied by Schratter and two Government officials, to the anteroom of the Grand Jury, which was then in session in the Federal Court House, in this district.

269 Arriving there, neither Kramer nor Schratter was invited before the Grand Jury; the papers were deposited upon a table in the anteroom; or, at the request of one of the aforesaid officials, were left in his custody. At about this time, the Assistant United States Attorney, in charge of this prosecution, emerged from the Grand Jury room, and taking the papers into his possession, carried them before the Grand Jury, where some of them were ordered impounded.

270 Meanwhile, Kramer and Schratter were directed to go to another part of the Federal building, and, having done so, were informed that warrants had been issued for their arrest for alleged offenses against the Customs' laws. The two men were subsequently arraigned before United States Commissioner Hitchcock, where they waived examination and were admitted to bail.

The only possible infraction of petitioners' rights that I can see which arose from the Government having acquired possession of the papers in the manner described is that Kramer and Schratter, by not being called before the Grand Jury, were thus deprived of

the opportunity of showing under oath the reasons, if such they had, why they should not be compelled to produce the documents mentioned in the subpoenas. 271
Wilson v. United States, 221 U. S. 361.

But this all happened eight months ago. This Court was then open, and has been open throughout the intervening period. Notwithstanding this fact, and notwithstanding the further circumstance that Schratter, immediately following his arrest, appeared before me to request permission to go to Europe, no showing was made, nor indeed, is it now made, that the corporations mentioned were not obliged to produce before the Grand Jury each and every paper and document called for in their respective subpoenas. 272
 In addition, the indictment against petitioners, and which, presumably, is founded, in part at least, upon the papers in question, was not returned until the May, 1922, Term of this court. There was, therefore, ample time for petitioners to have sought relief before any real prejudice came to them.

It is suggested that Schratter was in Europe until June of this year, and that, accordingly, he was in no position to assert the alleged rights of himself, or his corporations. The answer, I think, is that so far as the Government is concerned there was no call for him to go to Europe, or having been permitted to go, to remain away so long. Indeed, the Government opposed Schratter's application to leave this country, and I afforded him the privilege he sought only after his earnest solicitation, and that of one of his present attorneys. 273
 Having gone away for business reasons of his own, he has no reason to expect that, during his absence, the prosecuting officials would not proceed with the investigation and presentation of his alleged offenses before the Grand Jury. To permit him now to come into Court, and

- 274 without prejudice, plead that his rights have been invaded, might, and probably would, seriously affect, and prejudice the Government.

Kramer was the attorney for the two corporations. He was an officer of one of them, and I think, a stockholder of both, and intimately concerned therewith. He requested permission to appear before the Grand Jury as a witness, in order to exculpate himself from any wrongdoing charged against him. The privilege being granted, Kramer, in the course of his testimony, voluntarily produced certain papers and documents which, the record indicates, had an important bearing upon this prosecution. At any rate

- 275 Kramer was not indicted, and the petitioners were.

When the papers first referred to were taken to the Grand Jury anteroom, Kramer was their custodian; and their selection from the files of the corporation had been committed to him by Schratter. Being attorney for the companies and an officer of one of them, Kramer, had there been legal ground for the non-production of the papers, was then, and ever since has been, in a position to say so. He never asked to go before the Grand Jury for any such purpose, although, I do not doubt he had authority so to do had he cared to exercise it. Nevertheless, it was not until June 28, 1922, when he made an affidavit in support of this motion, that he took any really affirmative action, designed to protect what he now conceives to be a gross invasion of petitioners' constitutional rights.

276

From what has been said, I am unable to conclude that there was an unlawful seizure of such of the papers of the corporation as were produced by Kramer at the Grand Jury anteroom; and if, by any line of reasoning such may properly be said to have been the fact, I am satisfied that both Kramer and

Schratter, by their respective course of inaction, have unequivocally waived any rights they or any of petitioners may have had to a return of such papers. 277

Complaint is made that before being asked to produce papers of the corporation Kramer and Schratter should have been informed that their arrest was imminent—it is said that the failure of the Government to furnish such information was unfair and prejudicial to petitioners. In my judgment, there is no obligation upon the Government to wave a red flag in the face of prospective defendants. Offenders against the law ordinarily do not inform officers of the law as to when and where a crime will be committed, and by the same token, it is no part of the duty of enforcing the law to give advance notice of intended arrest. Furthermore, I apprehend that such a course of procedure would, if carried out, in connection with the service of a subpoena *duces tecum*, be destructive of strict obedience to the commands of the writ, particularly, if it called for incriminating documents. 278

There is another group of papers and part of the subject-matter of this motion, which is said to have been taken from defendants' office by two Government officials who remained there after Kramer and Schratter, accompanied by two other officials, had departed for the Federal building. The facts with reference to any such papers are in serious dispute between the officials in question and two employees of the corporation, which latter are supported in part, by the affidavits of Kramer and Schratter. Much capital is sought to be made out of the incident, that four Government officials went to petitioners' office at the time of the service of the subpoenas. It is argued that therefrom I should find 279

280 evidences that a "raid" was in contemplation by the officers; and that I should accept at its face value the more or less circumstantial account of petitioners' employees as to what took place. In reply to this, it is to be observed that what transpires upon an occasion such as the call that was made at the offices of the corporations, very often has an important bearing upon subsequent events; that the witnesses are ordinarily vitally interested in all that goes on, or are employees of persons who are; and that, if the Government has only a single witness to what occurs, he is most likely to be "outsworn" upon the trial. A more or less settled custom has, in consequence, arisen (and properly, I think), that the

281 Government will have upon the scene of a particular event, a number of persons who at the appropriate time can give their version of the same. The Government, as well as a defendant, is entitled to rightfully acquired knowledge, of things said and things done in the course of the proper service of lawful process—not only this, but the Government, as well as a defendant, is entitled to the means of proving that knowledge.

In the present instance, two of the officials in question, viz, Messrs. Williams and Norwood, happen to be known to the Court as men who have spent many long and honorable years in the Government

282 service. And when officers of vast experience, and known probity, give testimony as to the happenings upon an occasion wherein they were participants, that testimony is entitled to most serious and respectful consideration. And so here, I am disposed to give credence to the affidavits of these officers in preference to those submitted in opposition thereto. The substance and detail of what the officers say is not, in my opinion, improbable. Upon the

occasion to which the various deponents refer, Kramer and Schratter were doubtless desirous of currying favor with the Government agents, and, under such circumstances, prospective defendants frequently do things they would not do upon more mature consideration. I will, therefore, deny the request to return the group of papers, if any still remain in the hands of the Government, which are said to have been removed by Williams and his associate. The question of this alleged illegal seizure will doubtless arise upon the trial, and any question of fact as between the officials and the petitioners will probably resolve itself into such shape that it may be passed upon by the jury. If my confidence in the depositions just referred to has by any chance been misplaced, the error can then be corrected. 283 284

As to the papers produced before the Grand Jury by Kramer at the time he voluntarily appeared before that body, there is no merit in petitioners' application.

The petition will be denied.

August 24, 1922.

JNO. C. KNOX,
U. S. D. J.

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Stipulation.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

287

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

The undersigned stipulate and agree that the record to be presented to the Supreme Court of the United States on the appeal and writ of error allowed herein, shall consist of the following papers, viz:

1. Petition of Essgee Company of China, verified June 27th, 1922.
- 288 2. Order to show cause in these proceedings based upon the said petition dated June 27th, 1922.
3. The affidavits of David Schratter, Nathaniel H. Kramer, Dorothy Karas and Morris Schratter, all verified June 27th, 1922.
4. The affidavits of David Schratter, verified respectively July 10th, 1922, and July 20th, 1922.
5. The affidavits of Nathaniel H. Kramer, verified respectively July 10th, 1922, and July 22nd, 1922.

6. The affidavits of Morris Schratter and Dorothy Karas, verified July 10th, 1922. 289

7. The affidavits of John M. Williams, verified respectively July 7th, 1922, and July 18th, 1922.

8. The affidavits of Edward R. Norwood, verified respectively July 7th, 1922, and July 18th, 1922.

9. The affidavits of Francis A. McGurk, verified respectively July 10th, 1922, and July 18th, 1922.

10. The affidavit of Frank Dow, verified July 7th, 1922.

11. Subpoena *duces tecum* directed to Essgee Company of China, endorsements thereon and Marshal's return thereto. 290

12. The opinion and decision written and rendered by Hon. John C. Knox, District Judge.

13. The order dated September 12th, 1922, signed by Hon. John C. Knox, District Judge.

14. The memorandum endorsed upon the order of September 12th, 1922, signed by Hon. John C. Knox, District Judge.

15. Assignment of errors.

16. Petition for writ of error and its allowance. 291

17. Writ of error.

18. Petition to appeal and its allowance.

19. Citation.

Dated, New York, September 18th, 1922.

A. A. SILBERBERG,

Attorney for Essgee Company of
China and David Schratter.

WILLIAM HAYWARD,

United States Attorney.

292

Stipulation on Appeal Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

293

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, November 14, 1922.

ABR. A. SILBERBERG,

Attorney for Petitioners.

WILLIAM HAYWARD,

U. S. Attorney.

294

Clerk's Certificate.

295

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

United States of America,
Southern District of New York, ss:

IN THE MATTER

of

The Application of ESSGEE COM-
PANY OF CHINA and DAVID
SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

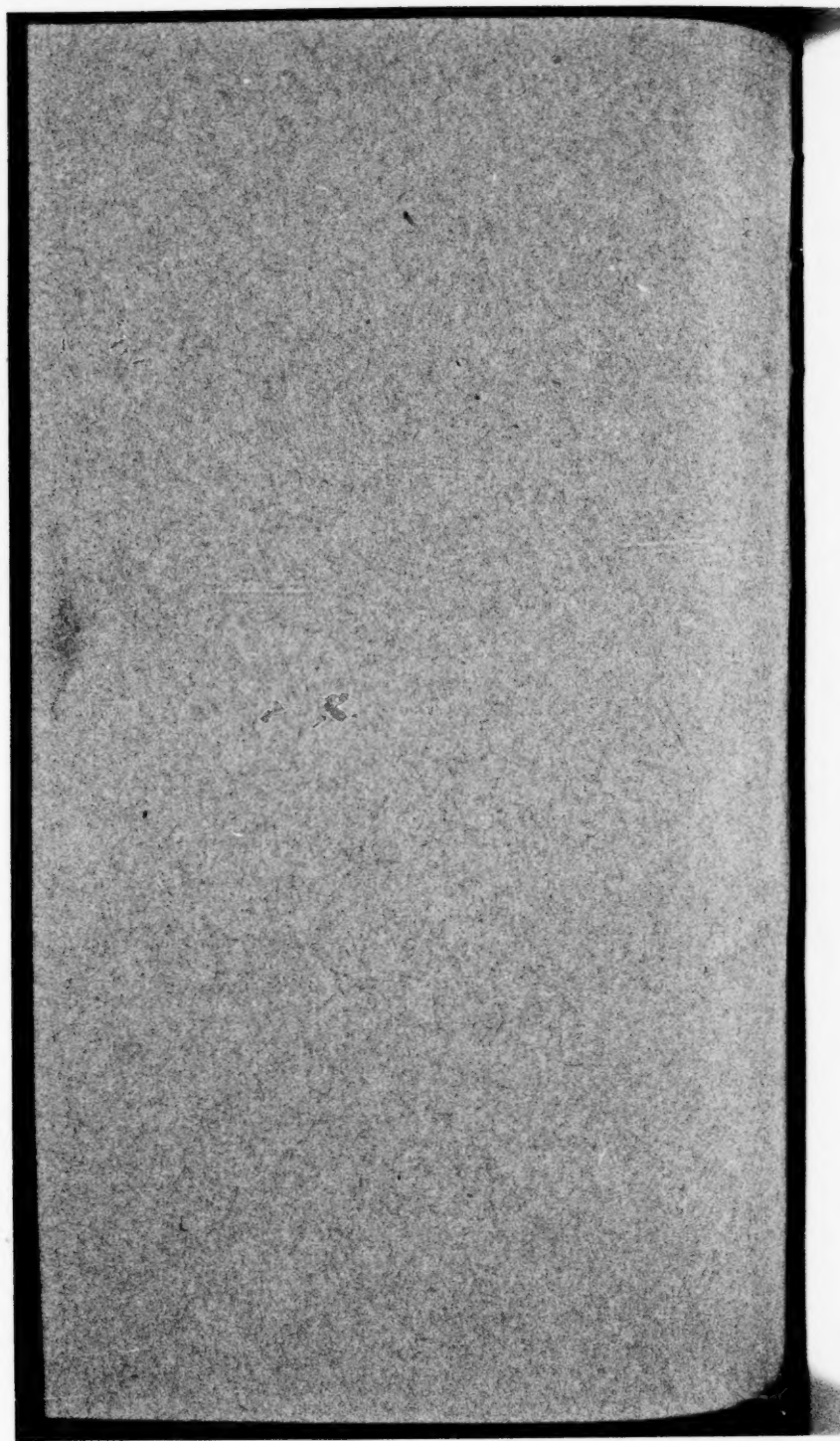
296

I, Alexander Gilchrist, Jr., Clerk of the District
Court of the United States of America for the South-
ern District of New York, do hereby certify that the
foregoing is a correct transcript of the record of the
said District Court in the above-entitled matter as
agreed on by the parties.

297

IN TESTIMONY WHEREOF, I have caused the seal
of the said Court to be hereunto affixed, at the City
of New York, in the Southern District of New York
this 14th day of November, in the year of
our Lord one thousand nine hundred and twenty-two
and of the Independence of the said United States
the one hundred and forty-s^{ix} *hundred*

ALEXANDER GILCHRIST, Jr.
Clerk.



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Citation.

United States of America, ss:

To Honorable William Hayward, United States
Attorney in and for the Southern District of New
York, GREETING:

You are hereby cited and admonished to be and
appear at the Supreme Court of the United States in
Washington, D. C., within thirty days from the date
hereof, pursuant to a writ of error filed in the office
of the Clerk of the District Court of the United
States in and for the Southern District of New York,
wherein Hanclaire Trading Corporation and David
Schratter are plaintiffs-in-error, and the United States
of America is defendant-in-error, and also pursuant
to an appeal allowed in a certain proceeding wherein
Hanclaire Trading Corporation and David Schratter
are plaintiffs-in-error, and United States of America
is defendant-in-error, to show cause, if any there be,
why the order, decree and judgment rendered against
the said plaintiffs-in-error, as in said writ of error
and in the petition of appeal mentioned, should not
be corrected and why speedy justice should not be
done to the parties in that behalf.

WITNESS, the Honorable Martin T. Manton,
Circuit Judge of the United States
for the Second Circuit, this 15th day of
September, 1922.

MANTON,
U. S. C. Judge.

4

Final Order.

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Courts and Post Office Building in the Borough of Manhattan, City of New York, on September 12, 1922.

Present: Hon. John C. Knox,
United States District Judge.

IN THE MATTER

5

of

The Application of HANCLAIRE
TRADING COMPANY and DAVID
SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

6

This application having duly come on to be heard before this Court on July 10, 1922, and after reading and filing the order to show cause herein dated June 27, 1922; the petition of Hanclaire Trading Company, verified June 27, 1922; the affidavit of David Schratter verified June 27, 1922; the affidavit of Nathaniel H. Kramer verified June 27, 1922; the affidavit of Dorothy Karas verified June 27, 1922; the affidavit of Morris Schratter verified June 27, 1922, thereto annexed; the affidavits of David Schratter verified July 10, 1922, and July 21, 1922; the affidavits of Nathaniel H. Kramer verified July 10, 1922, and July 22, 1922; the affidavit of Morris Schratter verified July 10, 1922, and the affidavit of

Dorothy Karas verified July 10, 1922, all submitted 7
 in support of the motion; and the affidavits of John
 M. Williams verified July 7, 1922, and July 18, 1922;
 the affidavits of Edward R. Norwood verified July
 7, 1922, and July 18, 1922; the affidavits of Francis
 A. McGurk verified July 10th, 1922, and July 18,
 1922, and the affidavit of Frank Dow verified July
 7, 1922, all submitted in opposition to said motion;
 and after hearing Hon. W. M. K. Olcott, of counsel,
 for the motion, and Francis A. McGurk, Assistant
 United States Attorney for the Southern District of
 New York, of counsel, in opposition thereto, and af-
 ter filing the opinion of the Court.

Now, on motion of William Hayward, United 8
 States Attorney for the Southern District of New
 York, it is

Ordered, that said motion be, and the same hereby
 is, in all respects denied.

JNO. C. KNOX,
 United States District Judge.

Memorandum.

I have signed this order in preference to that sub-
 mitted by petitioners inasmuch as I did not have
 in mind that the possession by the Government of
 all the papers sought to be recovered can be inquired 9
 into at the trial. Any such inquiry will be limited
 to such papers as may be offered in evidence as were
 removed by Government agents after response had
 been made to the subpoena served on one of the pe-
 titioners. Furthermore, as I understand my decision
 is to be reviewed there should be no question as to
 the finality of the order to be entered hereon.

Sept. 12, 1922.

JNO. C. KNOX,
 U. S. D. J.

10

Assignment of Errors.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

11 The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

12

The above-named Hanclore Trading Corporation and David Schratter having appealed to the Supreme Court of the United States from the judgment and decree and order of this Court entered on the 12th day of September, 1922, denying their application for an order to compel the United States Attorney in and for the Southern District of New York to surrender possession to them of books, records and papers in his possession and belonging to them or either of them, make the following assignments of error:

FIRST: The District Court of the United States in and for the Southern District of New York erred in denying the petition of the said Hanclore Trading Corporation and David Schratter for an order directing the United States Attorney in and for the Southern District of New York to surrender to them possession of books, records and papers belonging to them or taken from them.

SECOND: The District Court of the United States erred in deciding that Hanclore Trading Corporation and David Schratter waived their right to obtain possession of books, records and papers taken from them, or either of them, by their delay in applying for an order to return to them their books, records and papers from October 14th, 1921, until June 27th, 1922. 13

THIRD: The District Court of the United States erred in deciding that Hanclore Trading Corporation and David Schratter waived their constitutional guarantee against unreasonable search and seizure by waiting until June 27th, 1922, before they made the application to compel the return of their books, papers and records. 14

FOURTH: The District Court of the United States erred in deciding that to permit the United States Attorney in and for the Southern District of New York to have, retain and use against Hanclore Trading Corporation and David Schratter their books, records and papers, would not be a violation of the right assured to them by the 4th and 5th Amendments to the Constitution of the United States which protect them and each of them against unreasonable search and seizure of their said books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause. 15

FIFTH: That the District Court of the United States erred in deciding that the use by the United States Attorney before the Grand Jury of the United States of the books, records and papers which were taken from Hanclore Trading Corporation and David Schratter in connection with and as a basis of the indictment returned against them, was not a violation of the right assured to Hanclore Trading Corpora-

- 16 tion and David Schratter by the 4th and 5th Amendments to the Constitution of the United States which protect them against unreasonable search and seizure of their books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

- 17 SIXTH: The District Court of the United States erred in determining and deciding that the rights guaranteed to Hanclaire Trading Corporation and David Schratter under the 4th and 5th Amendments to the Constitution of the United States were not violated by the taking by the United States Attorney in and for the Southern District of New York of the books, records and papers which belonged to and were the property of Hanclaire Trading Corporation and David Schratter.

- 18 SEVENTH: The District Court of the United States erred in its refusal to find and decide and determine that the taking of the books, records and papers, fully described in the original petition of Hanclaire Trading Corporation and David Schratter, constituted an unreasonable search and seizure of the said books, records and papers and that the said taking of said books, records and papers was in violation of the rights assured to Hanclaire Trading Corporation and David Schratter by the 4th and 5th Amendments to the Constitution of the United States.

Dated, September 14, 1922.

A. A. SILBERBERG,
Solicitor for Hanclaire Trading
Corporation and David Schratter,
Office & P. O. Address,
256 Broadway,
Manhattan,
New York City.

Petition for Writ of Error.

19

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel
the United States Attorney for
the Southern District of New
York, to return all books, papers,
records, etc.

20

Hanclaire Trading Corporation and David Schratter, as plaintiffs-in-error, respectfully show:

That they made application to the United States District Court, in and for the Southern District of New York, for an order and decree directing the United States Attorney in and for the Southern District of New York to deliver to them and to surrender to them possession and custody of certain books, records and papers which were taken from them during October, 1921. That it was the claim and is the claim of Hanclaire Trading Corporation and David Schratter that certain books, records and papers belonging to them were taken by the United States Attorney and are now held by him without their consent and that the United States Attorney has used the books, records and papers, so taken from them or at least some of them, before the Grand Jury in support of and as a basis for the indictment which was returned by the Grand Jury sitting in the United States District Court in and for the Southern District of

21

- 22 New York against the plaintiffs-in-error. That the said United States Attorney further intends to use the books, records and papers belonging to the plaintiffs-in-error and so taken from them without their consent or permission, upon the trial of the indictment now outstanding against the plaintiffs-in-error.

- That the application upon the petition of the plaintiffs-in-error to compel the said United States Attorney to surrender to the plaintiffs-in-error possession of their said books, records and papers was heard by this Court and denied. That the final order, judgment and decree in the proceedings which the plaintiffs-in-error instituted upon their said application is dated
- 23 Sept. 12, 1922. That the application made by the plaintiffs-in-error to compel the said United States Attorney to give up and surrender to the plaintiffs-in-error their said books, papers and records was based upon the claim that the taking and use by the United States Attorney in and for the Southern District of New York of the said books, records and papers was in violation of the rights and prerogatives of the said Hanclore Trading Corporation and David Schratter, plaintiffs-in-error, as guaranteed to them by the Constitution of the United States and the 4th and 5th amendments thereof.

- 24 That the plaintiffs-in-error have claimed and now claim that the taking or the use of their said books, records and papers, without their permission and consent, was and constituted an unreasonable search and seizure of their papers and effects which belonged to them, the plaintiffs-in-error, and that the plaintiffs-in-error were by reason of the use of the said books, records and papers before the Grand Jury as a basis of an indictment against them, compelled in a criminal cause to be witnesses against themselves.

That the application which the plaintiffs-in-error made involved the construction and application of the

Constitution of the United States and a part and portion thereof. 25

That Hanclaire Trading Corporation and David Schratter feel aggrieved by the order and decree dated the 12 day of Sept., 1922, and submit that the matter is one proper to be reviewed by the Supreme Court of the United States upon writ of error.

Hanclaire Trading Corporation and David Schratter do now pray that a writ of error be allowed them herein directing the Clerk of the United States District Court in and for the Southern District of New York to send the record and the proceedings herein with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignments of error, herewith filed by the plaintiffs-in-error above named, may be reviewed, and if error found, corrected according to the laws and customs of the United States. 26

Dated, New York, Sept. 14, 1922.

HANCLAIRE TRADING CORPORATION,
DAVID SCHRATTER,

Plaintiffs-in-Error.

By A. A. SILBERBERG,
Solicitor for Plaintiffs-in-Error,
No. 256 Broadway,
Borough of Manhattan,
New York City. 27

The foregoing petition is granted and a writ of error allowed as prayed for and the proceedings of the United States Attorney in and for the Southern District of New York in the case wherein United States of America is plaintiff, and Hanclaire Trading Corporation and David Schratter and another are defendants is hereby continued, a bond and undertaking in the sum of \$250 having been filed with the clerk of this court.

MANTON,
U. S. Circuit Judge.

28

Writ of Error.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

29

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel
the United States Attorney for
the Southern District of New
York, to return all books, papers,
records, etc.

THE PRESIDENT OF THE UNITED STATES TO THE
HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE SOUTHERN
DISTRICT OF NEW YORK :

30

Because in the record and proceedings as also in the
entry of an order, judgment and decree entitled in
these proceedings, dated the 12th day of Sept., 1922,
between Hanclaire Trading Corporation and David
Schratter, plaintiffs-in-error, and United States of
America, defendant-in-error, manifest error is al-
leged to the great damage of the plaintiffs-in-error,
and willing that error, if any there be, should be duly
corrected and full and speedy justice done, do com-
mand you that you send the record and proceedings
herein with all things concerning the same to the Su-
preme Court of the United States, together with this
writ, so that you have the same in the said Supreme
Court at Washington, D. C., within thirty days from

the date hereof; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct the errors assigned. 31

Witness the Honorable William H. Taft, Chief Justice of the United States, the 15th day of Sept., 1922.

The foregoing writ is hereby allowed.

MANTON,

U. S. Circuit Judge.

Alex. Gilchrist, Jr.,

Clerk, United States District Court.

Petition to Appeal and Allowance.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE TRADING CORPORATION and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

Hanclaire Trading Corporation and David Schratter feeling aggrieved by the order, decree and judgment of this court, dated Sept. 12, 1922, signed by the Honorable John C. Knox, District Judge, and entered in the office of the clerk of this court, come now, by A. A. Silberberg, their solicitor, and hereby ap-

32

33

- 34 peal from said order, judgment and decree to the Supreme Court of the United States and petition this court for an order allowing the said Hanclore Trading Corporation and David Schratter to prosecute their said appeal at the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record and the proceedings and papers upon which the said order, judgment and decree was made, duly authenticated, may be sent to the said Supreme Court of the United States, and also that an order be made fixing the amount of security the said Hanclore Trading Corporation and David Schratter shall give and furnish upon said appeal, and that upon the giving of said security and undertaking all proceedings on behalf of the United States Attorney in and for the Southern District of New York in a cause now pending wherein the United States of America is plaintiff and Hanclore Trading Corporation and David Schratter are defendants, be suspended and stayed until the determination of the said appeal by the Supreme Court of the United States, or until the further order of the Court in the premises.
- 35

And your petitioners will ever pray.

A. A. SILBERBERG,

Solicitor for Hanclore Trading Corporation and David Schratter.

36

The foregoing appeal, as prayed for, is hereby allowed upon the appellants, Hanclore Trading Corporation and David Schratter, filing a bond for \$250, securing the costs of the United States and all proceedings of the United States Attorney in and for the Southern District of New York in the cause now pending in the United States District Court in the Southern District of New York, wherein United States

of America is plaintiff and Hanclore Trading Corporation and David Schratter and another are defendants, be and the same are hereby suspended and stayed until after the determination and decision by the Supreme Court of the United States of the appeal from the above-mentioned order, judgment and decree. 37

Dated, New York, Sept. 15, 1922.

MANTON,
U. S. Circuit Judge.

Order to Show Cause.

UNITED STATES DISTRICT COURT, 38

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

39

Upon the annexed petition of Hanclore Trading Corporation, the affidavit of David Schratter, the affidavit of Nathaniel H. Kramer, the affidavit of Morris Schratter, and the affidavit of Dorothy Karas,

I direct that William Hayward, Esq., United States Attorney in and for the Southern District of

- 40 New York, show cause before this Court at a Stated Term thereof, to be held at the Court House in the Federal Building, in the Borough of Manhattan, City of New York, on June 30th, 1922, at 10:30 A. M. of said day or as soon thereafter as counsel can be heard why the prayer of the petitioner above mentioned as made in these proceedings should not be granted, and why an order should not be made forthwith directing the said United States Attorney in and for the Southern District of New York to surrender and return to Hanclaire Trading Corporation and to David Schratter all the books, records, papers, letters, cables and memoranda set forth and referred to and
- 41 mentioned in the annexed petition and affidavits, and which said books, records and papers were taken from said David Schratter and Hanclaire Trading Corporation, in the manner and under the circumstances set forth in the annexed papers.

Let service of a copy of the annexed petition and affidavits on the United States Attorney in and for the Southern District of New York on or before June 28th, 1922, be deemed sufficient.

Dated, New York, June 27th, 1922.

J. M. MAYER,
U. S. C. J.

Petition of Hanclore Trading Corporation. 43

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

44

The petition of Hanclore Trading Corporation respectfully shows to this Court:

I. That your petitioner is a corporation organized under the laws of the State of New York, and had at the times hereinafter mentioned its principal place of business at 621 Broadway, in the Borough of Manhattan, in the City and County of New York.

II. That Hanclore Trading Corporation is a citizen of the State of New York and is one of the defendants in an indictment filed in this court. 45

III. That your petitioner is named as a defendant in an indictment which has been returned by the Grand Jurors for the United States in and for the Southern District of New York and empaneled during the month of May, 1922. The said indictment contains eight separate counts. In each of said counts, which are included in the indictment

46 aforesaid, this petitioner is charged with entering and introducing into the commerce of the United States certain imported merchandise upon a valuation which is claimed to have been false and fraudulent.

IV. That the said indictment and each of the counts therein were predicated upon certain evidence and certain statements and records presented by the United States Attorney before the Grand Jurors, who returned and filed the said indictment, and that the records, papers and invoices which were so presented to said Grand Jurors as a basis of the said indictment, including books of this petitioner, 47 were taken from this petitioner and its possession without due process of law and without its consent and contrary to the laws of the United States.

V. That this petitioner was, for some time prior to October 14th, 1921, and up to that time engaged in business in the City of New York and had its place of business in Rooms 523 and 517 in the building known as 621 Broadway, in the Borough of Manhattan, City of New York, within the Southern District of New York. The petitioner did not do an interstate business, nor was it engaged in interstate commerce and that the petitioner's corporate existence was governed by the laws of the State of New York, 48 the state under which its charter was obtained and granted.

VI. That petitioner so continued its business, which consisted of selling and dealing in straw goods and straw braids and other merchandise up to October 14th, 1921. On that day four persons representing themselves to be officers of the United States Government entered the petitioner's place of

business at the office and address above mentioned, and under the circumstances following, took from the petitioner and its officials and representatives all its books of account, minute book, invoices, records, papers and memoranda, without lawful process and contrary to the provisions of law and particularly in violation of the guarantees contained and set forth in the Constitution of the United States and the 4th Amendment thereof, and that the said books, records, papers, invoices and memoranda were so used against this petitioner without its consent after the same were so unlawfully seized, as herein detailed, in violation of the Constitution of the United States and the 5th Amendment thereof.

49

VII. The details and circumstances of the taking of the papers, books, records, invoices and memoranda from this petitioner are as follows:

50

"On October 14th, 1921, four men representing themselves to be officials of the United States Government came into the place of business of this petitioner and asked for Mr. Kramer and also for the co-defendant David Schratter. That one of the four men then served Mr. Nathaniel H. Kramer, the president of this petitioner, with a subpoena *duces tecum* in a proceeding against this petitioner, to attend before the Grand Jury on the same day in the United States District Court in the Southern District of New York.

51

"That Mr. Nathaniel H. Kramer did then and in response to and in keeping with said subpoena collect a bundle of papers, consisting of books of account, minute book, invoices, papers and memoranda and packed the same into a bundle, and he with two of the four officials who came to petitioner's office, as above stated, and the co-defendant, David

- 52 Schratter, went to the Federal Building in the Borough of Manhattan, in the City of New York.

"That when Mr. Kramer arrived at the Federal Building he was escorted to the ante-room where the Grand Jurors were sitting and was told that the Assistant United States Attorney wanted to talk to him and that his office was on the floor below (the fourth floor) in said building to which Mr. Kramer had then proceeded with the books, records and invoices and papers. One of the men who accompanied Mr. Kramer told him that he should leave the papers with one of the other two men who had come with Mr. Kramer, until Mr. Kramer had talked with the

53 Assistant United States Attorney and had returned to attend before the Grand Jury.

"That Mr. Kramer left the papers in the ante-room adjoining the room where the Grand Jurors were then in session, and went to the private office of one of the Assistant United States Attorneys, and when he came into the office, Mr. Kramer was told that a warrant had been issued for the arrest of said Kramer and also for David Schratter. The Assistant United States Attorney told Mr. Kramer to accompany him to the office of United States Commissioner Hitchcock, whose office was also in the Federal Building.

- 54 "That Mr. Kramer immediately demanded a return and surrender of all the papers which he had left in the ante-room adjoining the room in which the Grand Jurors were in session, and was told that the papers would not be surrendered or delivered or returned to him or to Hanclaire Trading Corporation to whom the said books, papers and records belonged. Mr. Kramer then protested against the retention of the said books, records, papers and memo-

randa, but without avail. He was told that the said books, records, papers, invoices and memoranda would be submitted to the Grand Jury. 55

"That the said Nathaniel H. Kramer was then held to bail upon a warrant which had been issued for his arrest."

VIII. Petitioner verily believes that the books, records, invoices, papers and memoranda which were taken from Mr. Kramer in the manner outlined above were used before the Grand Jury in the consideration of the charges which are embraced and included in the indictment returned against this petitioner.

IX. Petitioner never consented to such use nor produced or surrendered voluntarily the said books, papers, records, invoices and memoranda. The aforesaid books, papers, records, memoranda and invoices were produced by Mr. Kramer pursuant to a subpoena *duces tecum* which was served upon him as an officer of this petitioner. 56

X. Before Mr. Kramer was called as a witness, or even asked, pursuant to the subpoena so served, to produce any of said papers and before this petitioner had an opportunity to either produce the said books, records, invoices and memoranda or refuse to produce them for any reason, the same were taken from Mr. Kramer under the circumstances above stated and set forth and the same were without authority withheld from said Kramer and this petitioner. 57

XI. In addition to the papers, books and records so taken from Mr. Kramer, petitioner submits that the other two men who came to petitioner's office on October 14th, 1921, as officials of the United States Government, remained at the office of this petitioner

58 at 621 Broadway, in the Borough of Manhattan, City of New York, and raided the offices. These two officers who remained in petitioner's place of business ransacked the offices and desks and files of this petitioner. They took from the desks and files, in the absence of Mr. Schratter, an officer of this petitioner, and a co-defendant, and in the absence of Mr. Kramer, a quantity of books, papers, invoices, records, files, correspondence and cables.

XII. The only persons who were in the offices of this petitioner at the time when the Government officials raided the petitioner's place of business and took from its offices books, papers and records, were 59 petitioner's bookkeeper (a young girl) and one Morris Schratter, an uncle of the co-defendant.

XIII. The books, papers, invoices, files, correspondence and cables which were taken by the officials in the absence of petitioner's officers, were, petitioner charges, delivered to the United States Attorney in and for the Southern District of New York.

XIV. Petitioner is unable to state in detail the papers taken. Petitioner, however, charges the fact to be that among and included in the papers taken are the following:

60 General ledgers, customers ledgers, invoices for merchandise purchased by petitioner, invoices for merchandise shipped to petitioner, letters and cables which passed between petitioner and persons and concerns with which it dealt prior to October, 1921.

XV. The papers, books, records, letters, invoices and cables, taken by the Government officials from the place of business of this petitioner during the

absence of petitioner's officers, together with the papers which were taken from Mr. Kramer under the circumstances above stated and set forth, constitute all the books, records, papers, invoices, letters and cables which petitioner had in its business and in connection with the matters and transactions alleged and set forth in the indictment returned by the Grand Jurors, above mentioned and set forth. 61

XVI. The United States Attorney for the Southern District of New York refuses to return any of the said books, records, invoices, letters, cables and papers. All of the said things and property are now unlawfully and improperly held by the United States Attorney. They were seized unlawfully and they were also, petitioner charges the fact to be, used by the United States Attorney in the examination of the matters, things and charges alleged and set forth in the indictment which has been returned against this petitioner. 62

XVII. The seizure and taking of the said books, records, invoices, letters, cables, papers and other memoranda, was without due process of law and in violation of the protection against unlawful seizure as afforded to this petitioner by the Constitution of the United States and the 4th Amendment thereof, and the use of the said books, records, invoices, letters, cables and papers, and any of them by the United States Attorney before the Grand Jurors, who returned the indictment, and the consideration of the same in connection with the charges contained and set forth in said indictment by the said Grand Jurors, was in violation of the rights of this petitioner as the same are guaranteed by the 5th Amendment of the Constitution of the United States. 63

54 XVIII. This petitioner verily believes that the United States Attorney purposes to use and to make further use of the said books, records, invoices, letters, cables, papers and memoranda upon the trial of said indictment. Such use will further violate the rights of this petitioner as the same are preserved to it under the Constitution of the United States and the 4th and 5th Amendments thereof.

55 Wherefore, your petitioner prays that the United States Attorney in and for the Southern District of New York, and all persons acting under him as well as all persons in whose possession the books, records, invoices, letters, cables, papers and memoranda belonging to this petitioner or addressed to this petitioner, may be directed by this Court to deliver the same and all of them forthwith to this petitioner.

And this petitioner will ever so pray.

Dated, New York, June 27th, 1922.

HANCLAIRE TRADING CORPORATION,

By DAVID SCHRATTER,

Vice President.

State of New York,
County of New York, ss:

67

David Schratter, being duly sworn, deposes and says: That he is the vice president of Hanclaire Trading Corporation, the corporation mentioned herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that he is an officer, to wit, the vice president of Hanclaire Trading Corporation, which is a domestic corporation, and is familiar with the facts and circumstances herein.

68

The sources of deponent's information and grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Books, papers, records and correspondence belonging to said Hanclaire Trading Corporation.

DAVID SCHRATTER.

Sworn to before me this

27 day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

69

70

Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

71 The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and says: That he is a citizen of the United States of America and is a resident of the City of New York, in the State of New York.

72 The deponent was on October 14th, 1921, and now is the vice president of Hanclore Trading Corporation. Deponent joins in the application which Hanclore Trading Corporation is making for a return of books, papers, records, letters, cables, invoices and other memoranda taken from it under the circumstances set forth in the formal petition of said company and also makes this application on his own behalf as a defendant for the return of those papers and also a return of further individual papers hereinafter more fully detailed and set forth, which were, in addition to the papers of Hanclore Trading Cor-

poration, taken from this deponent without lawful process and without right in law and in violation of the guarantee against unlawful seizure as the same is safeguarded to deponent by the Constitution of the United States and the 4th and 5th Amendments thereto. 73

On October 14th, 1921, and for some time prior thereto deponent was engaged in business individually and also as vice president of Hanclore Trading Corporation and made his offices at the offices of Hanclore Trading Corporation, in Rooms 523 and 517 of 621 Broadway, Manhattan Borough, New York City. Deponent kept his personal books, records, papers, letters, documents, invoices and memoranda relating to his individual business and also relating to transactions and business in which Hanclore Trading Corporation and deponent were interested, in the offices above mentioned. 74

During the morning of October 14th, 1921, four men came into Room 523 in said building. Deponent was present at the time. Mr. Nathaniel H. Kramer, an officer of Hanclore Trading Corporation was present; Mr. Morris Schratter, who was working for deponent and Hanclore Trading Corporation, and Dorothy Karas, bookkeeper, were also present.

The details of what happened and the only paper served, viz, a subpoena, are fully set forth in the petition of Hanclore Trading Corporation, and for brevity deponent does not reiterate the same. Deponent, however, adopts and fully reaffirms everything contained in the petition of Hanclore Trading Corporation relating to the circumstances under which the books, papers, records, invoices and memoranda belonging to the Hanclore Trading Corporation were taken and ultimately seized by the United States Attorney. In addition to the books, records and papers 75

76 and other things of Hanclore Trading Corporation two men who were left behind after deponent and Mr. Kramer went before the Grand Jury, took deponent's individual papers, records, letters, invoices and other memoranda. These also deponent verily believes were delivered to the United States Attorney and were by him, as deponent verily believes, used before the Grand Jurors who heard and who returned the indictment containing the charges involved in this cause.

As soon as deponent arrived in the Federal Building in the City of New York on October 14th, 1921, deponent was taken by the two Government officers
77 to a room which adjoined the room where the Grand Jurors were in session. Deponent was not called as a witness but was told that one of the Assistant United States Attorneys wanted to see him. Deponent accompanied one of the men to the office of one of the United States Attorneys and deponent was there for the first time served with a warrant for deponent's arrest.

Mr. Kramer was also arrested at the same time. Deponent was then placed under arrest and brought for arraignment before the United States Commissioner. Deponent was held to bail which was duly given and furnished.

78 Prior to October 14th, 1921, which was on a Friday, I had arranged passage for Europe and I obtained leave of the Court to leave for Europe the following day (October 15th, 1921). I remained abroad in connection with business matters until June 9th, 1922. While in Europe I learned that I had been indicted jointly with the Hanclore Trading Corporation upon the charge that I and the Hanclore Trading Corporation violated the laws of the United States relating to introducing into the commerce

of the United States goods contrary to the provisions of law. I pleaded not guilty to the charges contained in the indictment on June 12th, 1922, and also entered a plea on behalf of the Hanclaire Trading Corporation on June 19th, 1922, of not guilty.

79

I have learned from the employees of Hanclaire Trading Corporation the details of what the two officers who remained in the place of business of the defendant company did. Their affidavits are submitted herewith. All of the books, records, papers, invoices, correspondence and memoranda belonging to both of the defendants have been delivered to the United States Attorney. Deponent charges the fact to be that the United States Attorney for the Southern District of New York now has the same in his possession and that the said books, papers, records, invoices, letters, cables and memoranda belonging to the defendants and each of them or either of them, obtained in the manner outlined in the annexed petition and other affidavits, were used by the United States Attorney in the submission of the charge embraced within the indictment before the Grand Jurors who returned the said indictment.

80

Deponent is unable to give a detailed list of the papers, books and records which belonged to this deponent, nor those which belonged to the defendant company. Deponent, however, maintains and charges that all of the books which consist of general ledgers, customers' ledgers, minute book, invoices for merchandise shipped to deponent or to the defendant company, letters, cables which passed between deponent and certain individuals and firms in European countries, or which passed between the defendants and others in foreign countries, were all obtained illegally and were used as a means of incriminating deponent and the defendant company. The United States At-

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82 torney in and for the Southern District of New York now holds all of the foregoing books, papers, records, invoices, letters and cables illegally and has refused to return the same.

Deponent verily believes that the United States attorney purposes to use the books, papers, records, files, correspondence and cables, so seized as above and in the annexed petition and affidavits set forth, upon the trial of the charges enumerated and set forth in the indictment returned as above stated, and that by reason of the premises and by reason of all the facts set forth and stated in the papers submitted herewith, the rights of deponent and the rights of
83 defendant company, as guaranteed to them and to each of them under the Constitution of the United States and the 5th and 4th Amendments thereto, have been violated.

Wherefore, your deponent prays that the United States Attorney and all persons acting under him, who may have any of the books, records, papers, correspondence, letters, cables and invoices belonging to this deponent or to the Hanclaire Trading Corporation return the same.

DAVID SCHRATTER.

Sworn to before me this

27 day of June, 1922.

84 Alexander Lewis,
Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

Affidavit of Nathaniel H. Kramer.

85

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

86

City & County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes and says: That in October, 1921, he was employed by Hanclore Trading corporation. Deponent was so employed on October 14, 1921, and was then an officer, to wit, the president of the Hanclore Trading Corporation. Deponent was on October 14, 1921, neither an officer or director of Essgee Company of China.

During the morning of October 14, 1921, four men entered the office of Hanclore Trading Corporation in the building known as 621 Broadway, Manhattan Borough, New York City. One of the four asked for deponent, and Mr. David Schratter. Deponent was in the office at the time and was told by the said spokesman for the four men that they were United States Government officers. Deponent was then served with a subpoena by the same man in a proceeding entitled against Hanclore Trading Corpora-

87

- 88 tion. This last-named corporation and Essgee Company of China had offices together in the building above mentioned. The subpoena as deponent recalls it, directed the Hanclore Trading Corporation to produce all its books, papers and records forthwith before the Grand Jury. Deponent collected a large bundle of papers consisting of some of the books, invoices and other papers belonging to the Hanclore Trading Corporation, and personally took the same and with Mr. Schratter and two of the four men, left the office for the Federal Building in the Borough of Manhattan, City of New York. When deponent and Mr. Schratter reached the Federal Building, the two men who represented themselves as government officers, went to the anteroom adjoining the room where the Grand Jurors were then in session. Deponent was not wanted as a witness pursuant to the subpoena, instead one of the men told deponent that he and Mr. Schratter were called by one of the Assistant United States Attorneys, whose office was on the third floor of the Federal Building. Deponent and Mr. Schratter were then in the above-mentioned anteroom on the fourth floor of the Federal Building.
- 89

- 90 Deponent had in his personal possession, all the papers which he had taken from the office, and one of the men requested deponent to hand the bundle of papers to one of the other officers to hold for him until he returned from the office of the Assistant United States Attorney. Deponent and Mr. Schratter proceeded to the office of one of the United States Attorneys, and he was introduced by one of the two men who were at the office of the Hanclore Trading Corporation. Deponent was then asked by the District Attorney to go before United States Commis-

sioner Hitchcock, and was there informed by said United States Attorney that he was under arrest, and the warrant of arrest was then served upon deponent and Mr. Schratter. Deponent at that time demanded the return of the papers which he had brought to the court house as above stated, and was told that he could not have the same and instead was ordered to proceed with the matter before United States Commissioner Hitchcock in the Federal Building. Thereupon the Commissioner held an arraignment of deponent and Mr. Schratter and deponent and Mr. Schratter were held to bail, and the bail was duly furnished. 91

Deponent finally did go back to the anteroom to demand the return of the papers which he had handed to one of the United States officers, and was told that he could not have these papers. Deponent was also then told that the papers had been impounded and would be used before the Grand Jury in due course. Deponent insisted that the papers belong to the Hanclaire Trading Corporation. Return was absolutely denied to him. 92

After bail was furnished by deponent he went back to the office of the Hanclaire Trading Corporation, and also Essgee Company of China, and deponent found at the office that two of the four men remained behind after deponent and Mr. Schratter went to attend before the Grand Jury in obedience to the subpoena which had been served, and was informed that these men had ransacked all the papers and records of Hanclaire Trading Corporation, and also Essgee Company of China, and had taken from the office two large bundles of books, papers, records, invoices and other memoranda as well as letters and cables belonging to both of the corporations named. No search warrant nor warrant or process of any kind 93

- 94 was served upon deponent or Mr. Schratter or any officer of either the Hanclaire Trading Corporation or the Essgee Co. of China, except the subpoena which directed the appearance of deponent before the Grand Jury with the books, papers and records of Hanclaire Trading Corporation. The Essgee Company of China was not even mentioned in the subpoena. The only party mentioned was the Hanclaire Trading Corporation. Deponent waived an examination upon the warrant under which he was taken into custody. No examination has ever been held. Instead the United States Attorney proceeded with the examination of charges against Hanclaire Trading Corporation, Ess-
- 95 gee Company of China and David Schratter before the Grand Jury. Deponent believed that he also was included in the charge which the United States Attorney was presenting to the Grand Jury. Deponent asked the privilege to testify before the Grand Jury. He was accorded that privilege, and the Grand Jury did not include deponent in either the indictment against Hanclaire Trading Corporation or in the indictment against Essgee Company of China and David Schratter.

- Mr. David Schratter left for Europe on the morning of the 15th of October, 1921, and he returned about June 9th, 1922. Deponent has been told that
- 96 the papers which were taken from this deponent belonging to Hanclaire Trading Corporation, and also the papers which were taken by the officers belonging to the Essgee Company of China, and also Hanclaire Trading Corporation, including the books, records, invoices, letters and cables of both of said corporations, were used by the United States Attorney in the presentation of the charge as the same was included in the indictment herein or in the indictment against Hanclaire Trading Corporation and David

Schratter. Many of the papers taken deponent is informed to be the personal papers and records and memoranda of David Schratter. Deponent is not now in a position to itemize or specify the particular books, records, papers, letters or cables which were taken from deponent or by the officers in the absence of deponent and Mr. Schratter from the place of business of Essgee Company of China and Hanclaire Trading Corporation, but in a general way knows that the books, papers and records included the ledgers, minute books, invoices, letters and cables. The fact is that both Essgee Company of China and Hanclaire Trading Corporation files were stripped of all their records, papers, files, letters and cables. All of these papers, records and books were taken under the circumstances outlined and set forth above. 97 98

NATHANIEL H. KRAMER.

Sworn to before me this

27 day of June, 1922.

Alexander Lewis,

Notary Public.

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

100

Affidavit of Dorothy Karas.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

101

The Application of HANCLAIRE
TRADING CORPORATION and DA-
VID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

State of New York,
County of New York, ss:

102

Dorothy Karas, being duly sworn, deposes and says:
On October 14th, 1921, I was employed by Hanclore
Trading Corporation as a bookkeeper and general fil-
ing and office clerk. I did my work at the offices of
Hanclore Trading Corporation at 621 Broadway,
Manhattan Borough, New York City, in Rooms 523
and 517 of that building. I had general charge of the
books of Hanclore Trading Corporation and also gen-
eral charge of the records, files, correspondence, cables
and invoices of said Hanclore Trading Corporation.

I remember that during the forenoon of Friday,
October 14th, 1921, four men came to the offices of
Hanclore Trading Corporation in Room 523. Mr.
David Schratter, the Vice President of Hanclore
Trading Corporation, and Mr. Nathaniel H. Kramer,

the president of Hanclaire Trading Corporation, were both present. Mr. Morris Schratter and I were also present. One of the four men then stated that they were United States officials and that they had been sent by the United States Attorney and wanted Mr. Schratter and Mr. Kramer to come down to the Post Office Building where the United States Attorney had his office, and to take with them certain papers, the details of which I do not now remember. Mr. Schratter and Mr. Nathaniel H. Kramer left with two of the four men a few minutes later. The other two men remained in the office and without talking to deponent or to Mr. Morris Schratter, who remained in the office, took together the books, records, letters, files, invoices, correspondence and cables of Hanclaire Trading Corporation. They went through all the papers and examined them. They did not ask deponent nor Mr. Morris Schratter (the only two people who were left at the office) for permission. I was thoroughly frightened and said nothing of objection or otherwise to what the two officers who remained were doing. 103

The two men who remained in the office after Mr. Nathaniel H. Kramer and Mr. David Schratter left, searched and examined every bit of record and paper and letter which Hanclaire Trading Corporation had. They made and continued a thorough search and examination of all the records and papers of Hanclaire Trading Corporation. They separated and set aside (and this I personally saw) a large number of invoices, cables, letters and memoranda. They also examined the general ledger and other books of Hanclaire Trading Corporation. A large number of invoices, cables, letters, papers and books, as well as files, were set aside by the two men and they further went into the adjoining room known as Room 517, and took together papers, books, records, invoices, letters and cables which 104 105

106 were contained in that room. Here in this room (Room 517) they also set aside a large quantity of invoices, letters, books, records and cables relating to the business of Hanclaire Trading Corporation and Essgee Company of China. They packed the books, papers, records, invoices, cables and memoranda into bundles and carried them away.

The papers and memoranda and letters which these two men left were few and of no importance. The two men remained in the offices about three hours and devoted themselves during that time to the examination and setting aside of the books, papers, records and invoices which were kept in the offices of Hanclaire

107 Trading Corporation.

DOROTHY KARAS.

Sworn to before me this

27 day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

Affidavit of Morris Schratter.

109

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and DA-
VID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

110

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says: In October, 1921, I was employed as general assistant in the office of Hanclaire Trading Corporation. I was present when four men came into the office of Hanclaire Trading Corporation on October 14th, 1921, and remember what transpired at that time.

111

I have read the affidavit of Dorothy Karas, the book-keeper and filing clerk, and reiterate her statements with the same force and effect as if the same were incorporated by me at length in this affidavit. I do not repeat the exact occurrences and statements contained in Miss Karas' affidavit because my recollection coincides fully with what Miss Karas says upon the subject. The facts detailed in the affidavit of Miss Karas are affirmed by me in detail.

112 I did at one point, while the two men who remained after Mr. Kramer and Mr. David Schratter left, ask them whether they had any warrant or order from the Court permitting them to take the papers. They told me that a paper had been served upon Mr. Kramer and that they were Government officers and had a perfect right to do what they were doing without any further papers.

The two men who remained after Mr. Kramer and Mr. David Schratter left the offices, carried off and took with them two large bundles of books, papers, records, memoranda, invoices and letters belonging to Hanclaire Trading Corporation and also to Essgee

113 Company of China.

MORRIS SCHRATTER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

114

Opposing Affidavit of Francis A. McGurk.

115

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
The Southern District of New
York to return all books, papers,
records, etc.

116

County of New York,

Southern District of New York, ss:

Francis A. McGurk, being duly sworn, says:

That he is an assistant to the United States Attorney
for the Southern District of New York and has charge
of this action.

Deponent has read over the moving affidavits sub-
mitted upon this application and is familiar therewith.

Upon information and belief deponent alleges that
no subpoena *ad testificandum* was issued to any in-
dividual connected with any of the corporations in-
volved in this proceeding, and that the only subpoenas
issued were two subpoenas *duces tecum* addressed to
the Hanclore Trading Corporation and the Essgee
Company of China, Inc., returnable before United
States Grand Jury in this district on October 14, 1921,
and to the original subpoenas deponent begs leave to
refer to the arguments of this motion.

117

118 That Nathaniel Kramer was never subpoenaed or called by the Government as a witness, but said Kramer came to deponent on various occasions while the Grand Jury was investigating the cases out of which this application arises and literally implored deponent to permit him to appear before the Grand Jury, stating among other things that he was willing to waive immunity.

In the course of these interviews with deponent, said Kramer volunteered to become a witness for the Government in its pursuit of Schratter, Zadek, the Essgee Company of China, Inc., and the Hanclaire Trading Corporation.

119 While deponent was in the Grand Jury room presenting the case to the Grand Jury, he was frequently called therefrom by Louis S. Posner, who stated he was counsel to the two corporations involved, and said Posner entreated deponent to permit said Kramer or Schratter to appear before the Grand Jury. Deponent refused the request. Thereafter, said Posner by letter, made the same request directly to the foreman of the Grand Jury, a copy of which letter is annexed hereto, made part hereof and marked Exhibit "A."

120 Finally, in May, 1922, subsequent Grand Juries having continued the investigation begun in October, 1921, after repeated entreaty by said Kramer and Posner, Kramer was allowed to appear before the Grand Jury in his own behalf. On the occasion of his so appearing, said Kramer produced, voluntarily, various records and documents of the corporations and willingly presented them to the Grand Jury for their inspection, consideration and impounding. The records and documents then produced by Kramer had never been the subject of a subpoena nor any form of request from anyone connected with the office of the United States Attorney.

That no demand was ever made by said Schratter, Kramer or Posner, nor anybody, prior to making this application, for the return of the papers now detained, except that said Kramer did ask deponent to return certain documents that had been produced, which said Kramer stated were irrelevant to the issues involved, and thereupon all the papers, etc., were gone over, and deponent is informed by John M. Williams, whose affidavit is annexed, that the papers sought by Kramer were delivered to him. 121

That the sources of deponent's information and the grounds of his belief as to the matters herein stated to be alleged upon information and belief, are the records of this court and the records of the United States Attorney and the United States Marshal for the Southern District of New York. 122

That there is pending with this application a similar one made by the same individuals and by the Hanclaire Trading Corporation. That both applications arose out of the same facts and circumstances and deponent asks that the answering affidavits submitted on this application be deemed as answering the application of the Hanclaire Trading Corporation.

FRANCIS A. MCGURK.

Sworn to before me this
10th day of July, 1922.

Carl Brecher,

Notary Public,

Kings Co. 123

Clerk's No. 496; Reg. No. 3178.

N. Y. Clerk's No. 317; Reg. No. 3340.

Com. expires March 30, 1923.

124

Exhibit "A."

LOUIS S. POSNER
ATTORNEY AND COUNSELLOR AT LAW
15 Broad Street, New York

October 14, 1921.

R. G. White, Esq.,
Foreman Federal Grand Jury,
Post Office Building,
Park Place, New York City.

Dear Sir:

125

There is now in process of presentation to your body, the facts in an alleged violation of the law with respect to under-valuation of certain imports by the Hanclore Trading Corporation, and more specifically, with reference to two of its officers, Messrs. Schratter and Kramer.

Mr. Kramer is a member of the Bar, in excellent standing, who only recently became identified with the company, and as such officer, cleared some of the merchandise in question. He feels confident, as do I, that he can readily clear himself of these charges, and also clear Mr. Schratter, if he may be permitted to appear before your body, and make an explanation of facts which otherwise might seem condemnatory.

126

An indictment would not only virtually ruin the business of the Hanclore Trading Corporation, but would gravely, and perhaps permanently, reflect upon the career of Mr. Kramer, regardless of the ultimate outcome of the trial, and in his behalf, I respectfully make this request for permission to appear before you.

I have asked Mr. Kramer to attend at my office on Monday, the 17th inst., ready to respond immediately to any communication which may result from this letter.

I am Sir,

Very respectfully,

L. S. POSNER.

LSP-GR.

Opposing Affidavit of John M. Williams.

127

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
The Southern District of New
York to return all books, papers,
records, etc.

128

County of New York,

Southern District of New York, ss:

John M. Williams, being duly sworn, deposes and says, that he is acting deputy collector of customs of the port and collection district of New York and has read the moving affidavit on this application and is familiar with the contents thereof and the incidents referred to therein.

That on the 14th day of October, 1921, deponent in company with Edward R. Norwood, Frank Dow and Sigmund Neustadt, customs agents, proceeded to the offices of the Essgee Company of China and the Hanclaire Trading Corporation, located at 621 Broadway, in the Borough of Manhattan, City of New York.

129

On entering the offices of these companies, deponent with Customs Agent Norwood asked for Mr. Schratter. David Schratter produced himself and was there-

- 130 upon served with two subpoenas *duces tecum*, one running to the Essgee Company of China and the other to the Hanclaire Trading Corporation, each calling for the production of various records, pertaining to the purchase and entry of certain merchandise by both corporations during the period January 1, 1915, to October 14, 1921. That at the time these subpoenas were served on David Schratter, he was seated at a table in the offices above mentioned, and opposite him sat Nathaniel Kramer. After said Schratter read the subpoenas which had been served on him, he handed them across the table to said Kramer. Deponent, while talking with said Schratter, had in his hand
- 131 certain entries and invoices and copies of private invoices covering the importation of merchandise by the Hanclaire Trading Corporation and the Essgee Company of China into the United States in this district, which merchandise had been entered by both corporations. Deponent showed said Schratter the entries and the invoices attached thereto that he had with him and asked to see the "private invoices" that the corporations had, similar to the ones deponent showed said Schratter. Said Schratter replied that he would gladly show what they had. Deponent gave said Schratter the dates of five invoices with the marks and numbers of the packages covered by them and said Schratter called to a girl in the
- 132 office to bring him all the invoices they had between the dates that deponent had just given him.

In response to said Schratter's request, the girl brought in a number of copies of consular invoices and said Schratter produced a number of similar copies from his desk. Deponent glanced at these copies of consular invoices and informed said Schratter that those were not what he wanted, stating that they had other "private invoices" in their possession

and that those were what was wanted. Said Schratter replied that the copies of consular invoices were all that they had. 133

During this conversation, deponent noticed lying on the table in front of said Schratter, some papers which appeared to be invoices, and he asked said Schratter if he would let deponent examine those papers. To the best of deponent's recollection, Schratter replied that those papers were nothing, but he did state that deponent might examine them. Deponent examined those papers and found that they were "private invoices" and that one of them covered a shipment which was also covered by one of the entries and invoices that deponent had in his hand, corresponding in all respects except as to the prices of the merchandise listed. The prices of the merchandise listed on the invoices that said Schratter had in his possession were higher than upon those attached to the entries in deponent's possession. At this juncture deponent told said Schratter that those were the bills that were wanted to be seen and if there was any more of them about, deponent would like to make an inspection of them. Said Schratter then said, "These are nothing at all. They don't mean anything." Deponent replied that he would like to see all of those kind of bills that the Essgee Company, the Hanclaire Trading Corporation and the Impex Trading Company had, if he had no objection. Said Schratter then said, "You can see everything we have." 134 135

At this juncture deponent noticed that a drawer in the table at which Mr. Schratter sat was open and lying therein there appeared some other invoices similar to the ones that were lying on the top of the table. Deponent remarked with respect to the invoices in the open drawer that they appeared to be

136 similar to the ones Schratter had just given him and stated to said Schratter that he would like to see the ones in the drawer also, as well as any more similar invoices that the corporations above mentioned had. Said Schratter said that he would show him everything and gave deponent the invoices that were in the drawer which were all made out to the Hanclore Trading Corporation. Said Schratter was then asked by deponent if he had any more of these invoices and said Schratter called the young lady in the office and gave her some instructions that deponent did not hear.

137 Deponent then called to the attention of said Schratter the subpoenas that had just been served upon him, and stated to him that deponent and those who were with him did not wish to impose upon said Schratter or his corporations, unnecessary hardship by bringing down all the papers, books and documents that he had in the office, and stated that they would look over the papers and books of the corporations, called for in the subpoena, while they were on the premises, and select what of them would be of interest to the Grand Jury, if such plan was agreeable. Said Schratter replied that that was very nice of deponent and those with him and said he would be very glad to let deponent and those with him examine what they had. Deponent and those accompanying him selected what was desired, consisting of certain invoices, letters and books, which were put on one side, and at Schratter's direction, an employee wrapped them up in packages. Meantime a taxicab was summoned by said Schratter and the papers were taken to the taxicab by Messrs. Schratter and Kramer and they were accompanied to the United States Grand Jury in this United States Courts and Post Office Building by Customs Agents Norwood and Dow.

Before Messrs. Schratter and Kramer left the offices at 621 Broadway, deponent asked said Schratter where the books and papers of the Essgee Company and the Impex Trading Company were, and he said that they did not have them; that they were put away in an old safe and that he didn't know where the safe was just then. He further stated that whatever books and records they had and were not using in the office, were stored in an outside room. Deponent informed Mr. Schratter that he would be glad to inspect the books and records in the outside room if Mr. Schratter had no objection, whereupon Mr. Schratter gave instructions to a girl in the office to go with deponent and Customs Agent Neustadt into the outside room to examine the books and records there. In the presence of this lady, deponent and Customs Agent Neustadt examined these books and records but found nothing among them pertaining to the Essgee Company of China or the Impex Trading Company, nor did deponent or Customs Agent Neustadt remove anything from this outside room. 139 140

Before said Schratter left, deponent asked him about the files of correspondence of the Hanclore Trading Corporation, the Essgee Company of China and the Impex Trading Company, and asked him if he wanted deponent and those accompanying him to look them over, and whether it would take any length of time. Messrs. Schratter and Kramer were then about to leave the office and Mr. Schratter called to the young lady in the office to let deponent and Customs Agent Neustadt look over all the correspondence they had in the office and to select therefrom and take away with them anything that they desired. Deponent and Customs Agent Neustadt looked over the files of correspondence produced by this young lady, at Mr. Schratter's direction, picked out some 141

142 of the correspondence and took it away with them to the United States Attorney's office. All of this correspondence, which has been impounded by the Grand Jury is the business correspondence of the corporations and is not personal correspondence of said Schratter or Kramer. Most of this correspondence deponent has since returned to Mr. Nathaniel Kramer, at his solicitation.

Deponent denies that any papers or documents were taken from the office at 621 Broadway, New York City, without the consent of David Schratter, and avers that said Schratter at the times hereinbefore mentioned, seemed disposed to accede to the wishes

143 of deponent.

Deponent denies that the offices at 621 Broadway, New York, were ransacked by deponent or Customs Agent Neustadt, who remained with deponent after the departure of Messrs. Schratter and Kramer to the United States Courts and Post Office Building. Deponent further states that both said Schratter and Kramer were informed before they departed their offices that deponent and said Neustadt would remain behind for the purposes hereinbefore mentioned, whereupon said Schratter enlisted the aid of one of his clerks to facilitate deponent in examining the records which said Schratter had theretofore disclosed, and the said clerk was present during all the times
144 deponent and said Neustadt made the examination of the papers and files placed at their disposal by said Schratter.

So far from any abuses of power, or unlawful searches and seizures being made upon or in the offices aforesaid, or upon said Schratter, deponent annexes hereto and makes a part hereof and marks "Exhibit A," a copy of a letter received by deponent and written to him by Nathaniel Kramer, dated No-

vember 5, 1921, expressing the thanks of said Kramer for the fair and clean manner of the treatment accorded him by deponent. 145

That deponent has never been asked by anyone for the return of any of the papers produced by said Schratter and Kramer, with the exception of certain papers and documents hereinbefore mentioned, and which deponent did return.

Deponent has been informed at the New York Custom House that Customs Agent Neustadt is now abroad in Germany as a treasury attache, and has been for some time prior to the filing of the motion herein.

JOHN M. WILLIAMS. 146

Sworn to before me, this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

148

"Exhibit A."

NATHANIEL H. KRAMER

ATTORNEY AT LAW

51 Chambers St.

New York

Tel. Worth 2882

Evening Tel. Orchard 3329

149

November 5, 1921.

Mr. Williams,
Room 248, Post Office Bldg.,
Broadway and Mail St.,
New York City.

Dear Sir:

150

I take the liberty of enclosing herewith the case numbers of the merchandise in bond belonging to the Hanclaire Trading Corporation in reference to which I spoke to you during the week and which, for reasons stated by me to you, I would like to have cleared if the same is permissible and there is no legal objection to it or that the clearance of these goods will not in any way prejudice the Government's investigation in any manner.

I thank you for fair and clean manner in which I have been treated by you in this matter.

Very respectfully yours,

NATHANIEL H. KRAMER.

NHK/AMH

Opposing Affidavit of Edward R. Norwood.

151

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books, papers,
records, etc.

152

County of New York,
Southern District of New York, ss:

Edward R. Norwood, being duly sworn, deposes and says that he is a customs agent assigned to the Port of New York.

Deponent has read the affidavit of John M. Williams, submitted on this application, and is familiar with all the transactions set forth therein up to the time the said Schratter and the said Kramer left the offices at 621 Broadway, New York City, to come to the Federal Building, and deponent reaffirms and realleges everything set forth in the affidavit of the said Williams as though more fully and at length averred by deponent in this affidavit. Deponent accompanied the said Kramer and Schratter from the offices at 621 Broadway, New York City, to the Federal Building in New York City.

153

154 Deponent, on said October 14, 1921, was duly deputized by the United States Marshal for the Southern District of New York to serve two subpoenas *duces tecum* upon the Essgee Company of China and the Hanclore Trading Corporation, and deponent proceeded to the offices of the said corporation, located at 621 Broadway, New York City, in company with John M. Williams and Customs Agents Dow and Neustadt, and there made inquiry for Mr. Schratter, who, upon producing and identifying himself, was served with both subpoenas. Deponent never served the said Kramer with any subpoena.

155 Upon the arrival of deponent and Customs Agent Dow at the Federal Building, in company with the said Kramer and the said Schratter, they came to the Grand Jury room and there the said Kramer and the said Schratter left the records they had brought with them.

Thereafter, deponent took the said Kramer and Schratter to the office of United States Commissioner Hitchcock, where they were placed under arrest upon a complaint made by deponent against the said Kramer and said Schratter, together with one Zadek.

156 At no time was deponent asked by either Kramer or Schratter to return the records brought by said Kramer and said Schratter to the Grand Jury, nor at any time did deponent or those with him ransack or burglarize or in any manner force the said Kramer and said Schratter to deliver to deponent or those accompanying him any records of the Hanclore Trading Company, the Esgee Company of China, or any personal records of the said Schratter or the said Kramer. As stated in the affidavit of John M. Williams, the said Schratter and the said Kramer were

quite willing to show and to deliver to deponent and to those accompanying him, whatever was asked for. 157

E. R. NORWOOD.

Sworn to before me, this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

Opposing Affidavit of Frank Dow.

158

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books, papers,
records, etc.

159

County of New York,

Southern District of New York, ss:

Frank Dow, being duly sworn, deposes and says that he is a Customs Agent attached to the Collector of Customs for the Port of New York and is familiar with some of the transactions incident to this application.

160 On the 14th day of October, 1921, deponent, in company with Acting Deputy Collector of Customs John M. Williams and Customs Agents Neustadt and Norwood, proceeded to the office of the Hanclore Trading Corporation and the Essgee Company of China, at 621 Broadway, Borough of Manhattan, in the City of New York, and was present when David Schratter produced the invoices mentioned in the affidavit of John M. Williams, submitted herewith. Deponent recalls that at first said Schratter denied that he had any other invoices besides the copies of the consular invoices mentioned in the affidavit of said Williams. Deponent recalls also that said Williams showed David Schratter a copy of an invoice which he had with him, and thereupon asked said Schratter to produce the invoices which corresponded to the one in his possession. Thereupon the true "private invoices" were produced by said Schratter.

161

Deponent was present when Schratter wrapped up in bundles, or caused to be wrapped up in bundles, the invoices and books that he produced at the request of said Williams, and deponent recollects distinctly that no seizure was made of any papers by deponent or any of those accompanying him, but that the papers so wrapped up as aforesaid were taken by David Schratter or one of the employees of his company, to the taxicab which was waiting downstairs, to convey them to the Post Office Building, and deponent and Customs Agent Norwood accompanied said Schratter and Kramer to the Post Office Building.

162

After the taxicab arrived at the Post Office Building, the documents were carried by either Schratter or Kramer to the Grand Jury room and there turned

over to the Assistant United States Attorney in charge 163
of the case.

FRANK DOW.

Sworn to before me, this
7th day of July, 1922.

Carl Brecher,
Notary Public,
Kings County.

Clerk's No. 496; Register's No. 3178.
N. Y. Clerk's No. 317; Reg.'s No. 3340.
Commission expires March 30, 1922.

Subpoena duces tecum.

164

THE PRESIDENT OF THE UNITED STATES OF AMERICA
to: Hanclore Trading Corporation, 620 Broad-
way, New York, N. Y. GREETING:

WE COMMAND YOU, that all business and excuses
being laid aside you appear and attend before the
Grand Inquest of the Body of the People of the
United States of America for the Southern District
of New York, at a District Court to be held in Room
426 at the United States Court House and Post
Office Building, Borough of Manhattan, City of New
York, on the 14th day of October, 1921, at eleven 165
o'clock in the forenoon to testify and give evidence in
regard to an alleged violation of Section 3, paragraph
G, Act of October 3, 1913, and not to depart the
Court without leave thereof or of the District Attor-
ney and that you produce at the time and place afore-
said, the following:

- (1) The book of minutes, stock book, stock ledger

166 and records of the corporation of the Hanclaire Trading Corporation.

(2) Ledgers, journals, cash books, day books, purchase books, sales books and trial balance books which show correct and actual value of goods, wares and merchandise imported by Hanclaire Trading Corporation from January 1, 1920, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland.

167 (3) All check books, stubs of check books, cancelled checks, pass books and deposit books of said Hanclaire Trading Corporation and also drafts, cancelled drafts, memoranda of drafts, records of payment of drafts and notices of dishonor of protest of unpaid drafts covering period from the 1st day of January, 1915, down to October 14, 1921.

168 (4) Any and all invoices, debit memoranda, receipts, bills and notes of whatever nature covering charges by Continentale Handels Aktiengesellschaft of Berlin, Germany, on account of importations made to the Hanclaire Trading Corporation and covering charges of whatsoever nature with the said Continentale Handels Aktiengesellschaft, and all other letters, reports, bills, invoices, correspondence and writings of whatsoever nature received between the dates of January 1, 1920, and October 14, 1921, from the aforesaid Continentale Handels Aktiengesellschaft or their agents and employees, or from any other person or persons who, during this period shipped, delivered, consigned or sold merchandise to the Hanclaire Trading Corporation from the aforesaid countries of Germany, France, Italy, Switzerland, China, Japan, England and Holland; and all other letter books containing tissue copies or carbon or other copies kept in loose leaf system and bound together containing

copies of all letters, bills, reports, invoices and writings of whatsoever nature, written and sent by Hanclore Trading Corporation to the firms, individuals and corporations hereinbefore in this paragraph named and designated. 169

(5) The private ledger or ledgers, book or books of Hanclore Trading Corporation showing the data from which annual, semi-annual, quarterly, monthly or any statements were made by it to the firms, individuals and corporations hereinbefore mentioned.

(6) Any and all other private invoices and other invoices including consular invoices, and all debit memoranda and slips which accompany said private invoices and memoranda and which show a correct and actual value of goods, wares and merchandise and the prices paid and agreed to be paid for said goods, wares and merchandise imported by the Hanclore Trading Corporation from January 1, 1921, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland. 170

(7) Any and all contracts, agreements, undertakings or copies of contracts, agreements, undertakings between the Hanclore Trading Corporation and the Continentale Handels Aktiengesellschaft between the 1st day of January, 1918, and October 14, 1921, for the purchase or sale of goods, wares and merchandise imported from foreign countries, by the Hanclore Trading Corporation. 171

(8) Any and all contracts, agreements, writings or undertakings and copies thereof between the Hanclore Trading Corporation and the Essgee Company of China, Inc., the Amgar Corporation and the Impex Trading Company of whatsoever kind and na-

- 172 ture covering the period between January 1, 1915,
down to October 14, 1921.

And for failure to attend and produce the afore-
said documents, you will be deemed guilty of a con-
tempt of court and liable to the penalties of the law.

WITNESS, the Hon. Learned Hand, Judge of the
United States District Court at the Borough of Man-
hattan, City of New York, on the 14th day of Oc-
tober, 1921.

ALEX. GILCHRIST, JR.,
Clerk.

William Hayward,

- 173 United States Attorney for the
Southern District of New York.

(Seal.)

Endorsement.

The President of the United States of America To
Hanclore Trading Corporation, 621 Broadway,
New York, N. Y.

Subpoena duces tecum.

Vio. Sec. 3, Par. G, Act of Oct. 3, 1913.

- 174 I hereby deputize Edward R. Norwood to serve the
within subpoena.

Oct. 14, 1921.

THOMAS D. MCCARTHY,
U. S. Marshal, S. D. N. Y.

C 32-55

I hereby certify, that on the 14 day of Oct., 1921,
at the City of New York, in my district, I personally

served the within subpoena upon the within-named Hanclaire Trading Corporation, 621 Broadway, N. Y. C., by exhibiting to David Schratter, Pres., at 621 B'way, N. Y. C., the within original, and at the same time leaving with him a copy thereof. 175

Dated, Oct. 15, 1921.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

E. R. Norwood
Custom Agt.

Replying Affidavit of David Schratter. 176

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books,
papers, records, etc. 177

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and says that he is one of the applicants in these special proceedings and has joined with the Essgee Company of China and also in the separate proceedings instituted on behalf of deponent and Hanclaire Trading

178 Corporation to compel the United States Attorney to return the books, records, papers and letters taken from deponent and said corporations. The fact is that deponent's personal books, records and papers were taken by the government officials from the office of deponent on October 14th, 1921, and that the said papers are now held by the United States Attorney, in and for the Southern District of New York.

Deponent has been told about the affidavits which have been submitted in opposition to the application. Deponent, nevertheless, reiterates the statement in the original petition and in his affidavit and adds positively that at no time did deponent, by word of mouth or by act, authorize or consent to the taking of any books, records or papers belonging to either of said corporations or this deponent by the government officers. The fact is that when the government officers came to the office of said corporations on October 14th, 1921, they did serve a paper which Mr. Kramer told deponent was a subpoena. Deponent knew at the time that Mr. Kramer was a lawyer and for that reason relied upon Mr. Kramer in the matter of the talk with the government officers. Mr. Kramer did most of the talking and pursuant to the mandate of the subpoena, Mr. Kramer did collect a number of papers, books and records belonging to Hanclore Trading Corporation and packed same into a bundle and with deponent and the government officers, proceeded to the Federal Building. Deponent did not participate in or hold any conversations with respect to any particular invoices or any particular papers, or the location of any particular papers, with the government officers.

On October 14th, 1921, when Mr. Kramer left the office, two of the government officers remained be-

hind. What happened during the time when deponent and Mr. Kramer were detained in the Federal Building, is not within deponent's personal knowledge. The facts are stated and set forth in the affidavits of the bookkeeper and Mr. Morris Schratter. 181

Deponent denies that he ever made a statement to Mr. Williams or any other government officer that he was willing that he or any other government officer should look at the books and records of said corporations or which belonged to deponent. Deponent also denies that he made a statement that he had no objection to the inspection by the government officers of other books, records and papers which were in the place of business of said corporations at the time. There was at said time, on October 14th, 1921, no talk about the files of correspondence of the Hanclore Trading Corporation or the Essgee Company of China, or the Impex Trading Company, and at no time did deponent authorize any government officer or Mr. Williams, or any other person, to look through any of said books, records or papers. Deponent gave at no time on October 14th, 1921, any such instructions as are detailed and set forth in Mr. Williams' affidavit. Deponent reiterates affirmatively that every paper, document, letter, invoice, cable or book which the United States Attorney now has and which originally came from the office of said corporations or of this deponent, were originally taken without the consent of this deponent and without his authority, and without the consent and authority of said corporations. Deponent and Mr. Kramer were the only persons in authority in the business of said corporations. It is absolutely untrue that this deponent and Mr. Kramer were informed before they left for the Federal Building with two of the government officers, that the other two government officers would remain 182 183

184 behind for the purpose of examining the books, records and papers of said corporations or which belonged to this deponent. At no time was deponent served with any subpoena or other process calling for his individual books, records or papers. The very first paper which was served was served on Mr. Kramer. That was while deponent was at the office of said corporations. The next paper was so served at the Federal Building and was a warrant for the arrest of this deponent. At the same moment, a like warrant for the arrest of Mr. Kramer was also served. Deponent did not deliver any of the papers of either of said corporations or those which belonged
185 to this deponent, to any Assistant United States Attorney, or anyone in the United States Attorney's office. The fact is that Mr. Kramer had the papers in his personal possession pursuant to the subpoena. He had with him these papers in a bundle which he carried under his arm in the anteroom where the Grand Jury was in session on October 14th, 1921, and gave the same to hold to one of the government officers, after Mr. Kramer was told that this officer wanted to hold them until Mr. Kramer had talked to the Assistant United States Attorney. The facts with regard to this taking are fully set forth in the original papers and deponent, for that reason, does not repeat
186 same herein.

The invoices to which Mr. Williams and the other government officers make reference in the opposing affidavits, and which they call "private invoices," belong to and were the property of this deponent. At no time were they delivered by deponent to anyone. Deponent never surrendered possession of them. They were seized without process against this deponent and against his objection. Deponent had arranged to sail to Europe on October 15th, 1921, and after he was

taken into custody under the warrant issued against him, he obtained leave of the government officers to continue his passage to Europe. Deponent returned on the 9th of June, 1922, and made the application for the return of said papers at the first opportune moment, and as soon as it was possible to have the papers drawn and prepared. 187

DAVID SCHRATTER.

Sworn to before me, this
10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

Commission expires March 30, 1923.

N. Y. Co. Clerk's No. 137; Reg. No. 3136. 188

190 **Replying Affidavit of Nathaniel H. Kramer.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

191 The Application of HANCLAIRE
 TRADING CORPORATION and
 DAVID SCHRATTER, to compel
 the United States Attorney for
 the Southern District of New
 York to return all books,
 papers, records, etc.

State of New York,
 City of New York, ss:
 County of New York,

192 Nathaniel H. Kramer, being duly sworn, deposes
 and says: He is an attorney at law, duly admitted
 and licensed to practice in all the courts of this state.
 That he is now engaged in the practice of law at
 No. 51 Chambers Street, Manhattan Borough, New
 York City.

 During October, 1921, deponent, in addition to the
 practice of law, devoted himself to mercantile pur-
 suits. He was at that time connected with the Han-
 claire Trading Corporation, one of the two corpora-
 tions on whose behalf application is being made to
 compel the United States Attorney to surrender and
 return papers, records and letters seized from the
 possession of said corporations.

Deponent well remembers the time when the government officers, including Mr. John M. Williams, came to the office of the said corporations. Deponent takes issue with Mr. Williams and also with the others who are making affidavits in opposition to this application, as to what took place on October 14th, 1921. Deponent is positive that only one subpoena was served and that that subpoena was directed to Hanclaire Trading Corporation. This subpoena was served on deponent and not on Mr. Schratter. 193

The fact is that when Mr. Williams and his associate officers entered the office of the said corporation on October 14, 1921, they asked for papers relating to the entry of certain merchandise by Hanclaire Trading Corporation. Deponent read the subpoena at the time. He, as an attorney, understood the purport and scope of the subpoena and personally collected the papers called for by the subpoena. These papers all related to the Hanclaire Trading Corporation; the Essgee Company of China, was not even considered at the time, and deponent was not in any way interested therewith, and deponent packed the papers so collected into a bundle and with Mr. Schratter and two of the government officers, went in a taxicab to the Federal Building. Deponent had possession of the Hanclaire Trading Corporation papers at the Federal Building and Mr. Schratter did not have any of the papers. Deponent denies that he turned over any papers of the Hanclaire Trading Corporation to the Assistant United States Attorney in charge of the case on October 14th, 1921, or at any other time. In this connection, deponent calls the special attention of the Court to the fact that there is no affidavit from the Assistant United States Attorney who was supposed to have been in charge of this case before the Grand Jury sitting in October, 194

195

196 1921; that neither the deponent nor Mr. Schratter turned any papers over to him. Important on this point also is the fact that although the subpoena was served October 14th, 1921, and the Grand Jury convened for that month was then in session, the indictments returned against both of the said corporations were not so returned until May, 1922.

During all the time when deponent was present and the government officers were in the offices of the Essgee Company of China and the Hanclore Trading Corporation on October 14th, 1921, deponent did not hear Mr. David Schratter consent to the taking of any papers by the government officers. No papers
197 were in fact at the time taken by any government officers while deponent and Mr. Schratter were at the office. Deponent did not consent by word of mouth or act, or otherwise, to the taking of any papers on October 14th, 1921, or at any other time.

Deponent did write a letter dated November 5, 1921, addressed to Mr. Williams, but that letter has, however, nothing to do with these proceedings nor with the transactions or matters included in the indictments which have been returned and filed against the above-named corporations and David Schratter.

NATHANIEL H. KRAMER.

Sworn to before me, this

198 10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Commission expires March 30, 1923.

Replying Affidavit of Morris Schratter.

199

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books,
papers, records, etc.

200

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says that he was, on October 14th, 1921, connected with the Essgee Company of China, and Hanclore Trading Corporation. Deponent remembers the happenings of October 14th, 1921; that four government officers entered the place of business of said corporations; that deponent was left behind with Miss Karas after Mr. David Schratter and Mr. Kramer left with two of the government officers. At that time Mr. Kramer had a bundle of papers of Hanclore Trading Corporation under his arm. The two government officers who were left behind searched every book, record, file and paper in the office of said corporations. Deponent did ask, as he has already stated, of said government officers, about their authority.

201

- 202 They told him that they had a right to do what they were doing. The government officers took with them what they wanted, without asking deponent. Deponent and Miss Karas were the only persons left in the office at the time. Deponent did not consent or authorize the taking of any papers. Deponent did not have any authority to do this. Deponent was only a workingman for said corporations. The two officers who were left behind did take away with them several large bundles of papers, books and records of said corporations and also some which belong to Mr. David Schratter. The records of the corporations and Mr. David Schratter were virtually
- 203 stripped by the government officials who were left behind after Mr. Kramer and Mr. Schratter had left.

MORRIS SCHRATTER.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Commission expires March 30, 1923.

Replying Affidavit of Dorothy Karas.

205

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER**of**

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books,
papers, records, etc.

206

State of New York,
County of New York, ss:

Dorothy Karas, being duly sworn, deposes and says that on October 14th, 1921, she was the only girl employed by the Essgee Company of China and Hanclaire Trading Corporation. Deponent is the person referred to as the young lady in the affidavit of Mr. Williams, about which deponent has been told.

207

Deponent remembers well the happenings of October 14th, 1921. The entry of four men at one time into the office of said corporations and the tone of the talks at the time, and the taking of papers by Mr. Kramer and packing them into a bundle, all tended to impress upon the mind of deponent the exact facts and circumstances which transpired on October 14th, 1921.

- 208 Deponent denies that Mr. David Schratter gave her any directions during that morning to give to any person, the government officers, or others, any papers, records, or books. Deponent also denies that Mr. Schratter, on said day, called to deponent for any particular papers or invoices. Mr. Schratter did not tell deponent on that day or at any other time, to show any of the books, records or papers of said corporations to any of the government officers. Deponent well remembers that Mr. Kramer and Mr. Schratter left the office of said corporations with two of the government officers. The other two government officers remained behind and what they did
- 209 with the books, records and papers which belong to said corporations or Mr. Schratter, is fully set forth in the affidavit which deponent has heretofore made. Deponent repeats that the government officers who remained behind in the office of said corporations, ransacked all the files of said corporations and took away practically all of the books, records and papers which the said corporations had in their business.

DOROTHY KARAS.

Sworn to before me, this
10th day of July, 1922.

Alexander Lewis,

Notary Public,

210

Queens Co. No. 1620.

N. Y. Co. Clerk No. 127; Reg. No. 3136.
Com. expires March 30, 1923.

Replying Affidavit of John M. Williams.

211

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER, to compel
the United States Attorney for
the Southern District of New
York to return all books,
papers, records, etc.

212

County of New York,

Southern District of New York, ss:

John M. Williams, being duly sworn, says:

Deponent reiterates his statement that David Schratter personally told deponent that he could see everything they had. This was said by David Schratter to deponent in Kramer's presence. Deponent never spoke one word to Kramer in the office of the corporation on October 14, 1921.

213

Deponent never saw David Schratter or Kramer before in his life. Deponent never personally met Kramer until he personally came to deponent's office shortly after October 14, 1921, and introduced himself, and commenced telling deponent how unfortunate he had been in becoming involved with such people, and that he did not know anything at all about the

214 details of business of the corporations which were all in Schratter's hands. He further stated that he personally had lost a lot of his own money through his association with Schratter and the Hanclore Trading Corporation.

Deponent denies that the letter attached to his answering affidavit dated November 5, 1921, from Kramer does not refer to the matters in the case as Kramer states. Deponent never had any other transactions with Kramer, but those connected with the present case. Deponent submits that the letter shows on its face that it refers to the matters under investigation by the Government, which were in this case.

215 Deponent has carefully examined the papers, etc., in the possession of the United States, and now states that all the papers and correspondence taken by deponent and Customs Agent Neustadt were entirely returned to Kramer by deponent at Kramer's own solicitation, on October 19, 1921. Kramer in his letter referred to above, expresses his gratitude for that.

Deponent denies that Morris Schratter was in the "outside room" where the books and papers of the Essgee Company and Impex Trading Company were stored. The only person in that room was the girl sent there by Schratter, and the only things examined by deponent and Neustadt were some books that girl selected for deponent and Neustadt. One or two of these books were inspected, but as deponent could not ascertain whether they were the books of the Essgee and Impex Companies, he spent not more than five minutes in that room. Nothing whatever was removed from the room by deponent or Neustadt. Morris Schratter was never in the private office where the subpoenas were served while deponent was there.

216

Deponent denies that there was anyone in the private office of the corporations, at 621 Broadway, where the subpoenas were served, except the customs officers, Schratter and Kramer and that a girl came in when called for by Schratter to help him locate the papers he was looking for. This private office was off the main or outer office of the corporations, and was entered by deponent and his associates by going through the main or outer office. In this outer or main office, as deponent passed through, there was a man and a girl who showed deponent the books in the "outside room," and who showed deponent at Schratter's direction, the correspondence of the Hanclore Trading Corporation, and the Essgee Company of China. 217 218

Deponent never asked Schratter for any of his private papers or records. The transactions had by deponent were with Schratter and these covered only the private invoices, purchase journals and foreign correspondence of the corporations. Deponent and Neustadt remained on the premises 621 Broadway, for less than a half hour after Schratter and Kramer departed.

Deponent never indicated to Schratter or Kramer that they would be called as witnesses before the Grand Jury. No request was made by deponent or by anyone in deponent's hearing, upon Schratter and Kramer to come to the Federal Building. 219

JOHN M. WILLIAMS.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

220 **Replying Affidavit of Edward R. Norwood.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

221 The Application of HANCLAIRE
 TRADING CORPORATION and
 DAVID SCHRATTER, to compel
 the United States Attorney for
 the Southern District of New
 York to return all books,
 papers, records, etc.

County of New York,
Southern District of New York, ss:

Edward R. Norwood, being duly sworn, says:

That he has read the replying affidavits of the moving parties.

222 On the occasion of serving the subpoenas on the
 Hanclore Corporation and the Essgee Company of
 China on October 14, 1921, at 621 Broadway, deponent
 never had any conversation whatever with Morris
 Schratter or Dorothy Karas, nor did said Karas or
 Schratter have any conversation whatever with deponent.

The transactions had with David Schratter were
had in the private office of the suite of the corporations
at 621 Broadway, and covered a period of one-half
hour, at the end of which deponent left with

Schratter, Kramer and Dow. The entrance to this private office was through an outer office in the same suite, through which deponent and his associates passed to enter the private offices of the corporations. 223

Deponent in passing into the private office had to pass through the outer office in which latter deponent noticed a man and girl. But this man and girl remained in the outer office while deponent and his associates were in the private office with David Schratter and Kramer, who were the only two besides deponent and his brother officers in the private office, which was closed while the transactions enumerated in the answering affidavits were had. The only time Karas was in the private office was when summoned there by David Schratter to bring in the invoices then under discussion. 224

Deponent and his associates were in the offices not longer than a half hour when deponent and Customs Agent Dow left with Schratter and Kramer.

Deponent did not entice or request David Schratter or Kramer to come to the Federal Building, nor in any way indicate to them that they would be called before the Grand Jury or asked to appear as witnesses. Their appearance with the books and papers was entirely unsolicited.

Deponent never served a warrant upon Schratter or Kramer. Upon arrival in the Federal Building Schratter, Kramer, the records and papers and deponent and Customs Agent Dow immediately proceeded to the Grand Jury room where they were met by the Assistant United States Attorney who took the books and records produced. 225

After the records were turned over to the Assistant United States Attorney, deponent and Customs Agent Dow went with Schratter and Kramer, whom depo-

232 upon deponent took all of the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case.

Subsequently deponent was present upon the arraignment of defendants who both waived examination before the United States Commissioner and readily procured bail.

Deponent at no time had any conversation with David Schratter in connection with this case. Said Schratter was never in deponent's office. Said Kramer on October 14, 1921, was not in deponent's office. He came there frequently thereafter seeking to appear before the Grand Jury.

233 Deponent has within the past week, examined the records of the Essgee Company of China in the office of the County Clerk of New York County and finds that there are two unanimous consents of the stockholders of that company on file there, one dated May 12, 1917, and the other dated November 28, 1917, filed March 1, 1918. Both consented to increases to capital stock of the Essgee Company of China. In the first, Kramer is the attorney who prepared it and the notary who took the acknowledgment. In the second, he is the attorney who prepared it and signed it as secretary of the Essgee Company of China, and further, he signs in the last document as being the owner of 50 shares of stock, being half of the stock outstanding at the time of the second unanimous consent to increase the capitalization. Deponent distinctly recalls said Kramer telling deponent subsequent to October 14, 1921, that he was then an officer of the Essgee Company of China, but that said company was virtually dormant, and that its affairs were taken over by the Hanclore Trading Corporation. He further stated that the Essgee Company had not been dis-

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solved. This fact is in direct contradiction of Kramer's statement in the moving papers that he was not an officer of the Essgee Company on October 14, 1921, but an employee thereof. 235

There are now in the Government's possession, exclusive of the records and papers volunteered by Kramer, the following produced in response to the two subpoenas:

Minute book of the Hanclaire Trading Co.

Stock certificate book of the Hanclaire Trading Co.

Combined stock and stock ledger of the Hanclaire Trading Co.

Two ledgers.

One import sales book.

236

One import book giving a list of importation returns.

One combined sales export and return export book.

One combined purchase journal and purchase return book.

One purchase journal.

The following invoices all covering merchandise shipped by Continentale Handels Atkiengesellschaft, Berlin, Germany, to:

Impex Trading Company, covering the period April, May and June, 1921.

Essgee Company of China covering period September, 1920, and January, February, March and April, 1921. 237

Amjar Corporation, covering period October, November, and December, 1920.

A sheaf of Marconigrams, coded, from Berlin, Germany, addressed to Amjar Corporation during October, November and December, 1920.

Drafts drawn by Continentale Handels Atkienge-

- 238 sellschaft, Berlin, Germany, against Impex Trading Company during May, 1921; against Essgee Company of China, during February, March and April, 1921.

Memo of agreement between Mercier, of Montreal and Hanclaire Trading Company, covering *inter alia*, the fixing of prices of merchandise, dated October 6, 1921. Mercier is the Hanclaire's Canadian representative.

Letter from Mercier to Kramer dated October 7, 1921.

Letter from Capporni & Co., Ltd., Montreal, to Kramer, dated September 29, 1921.

- 239 Personal tax assessment for Morris Schratter and David Schratter by City of New York, for year 1922.

Quadruplicate consular invoices of Essgee Company of China and Impex Trading Company covering February, March, April, May and June, 1921.

These comprise all, and the only papers, records, books, etc., produced in obedience to the subpoenas.

FRANCIS A. MCGURK.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

- 240 N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

Further Affidavit of Nathaniel H. Kramer. 241

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and DA-
VID SCHRATTER to compel the
United States Attorney for the
Southern District of New York,
to return all books, papers, rec-
ords, etc.

242

City and County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes
and says:

He has read the further affidavits submitted in this
proceeding on behalf of the Government verified July
18th, 1922. Deponent notes the statement which Mr.
Williams now makes that he, Mr. Williams, carefully
examined the papers, etc., now in the possession of the
United States, and that all the papers and correspond-
ence taken by Mr. Williams and Customs Agent Neus-
tadt were all returned to this deponent on October 19th,
1921. The papers, etc., referred to by Mr. Williams
and Mr. Neustadt as having been returned to deponent
are the papers, which according to Mr. Williams were
taken by him and Mr. Neustadt in the absence of de-
ponent and Mr. Schratter from the office, and while
deponent and Mr. Schratter were at the Federal Build-
ing in obedience to a subpoena which had been served,

243

244 and also while deponent and Mr. Schratter were detained under the warrant of arrest, pending the giving of bail. None of the papers which deponent received on October 19, 1921, from the Government officials included any of the papers or records which deponent and Mr. Schratter took pursuant to the subpoena to the Federal Building on October 14, 1921.

Deponent has also read the statement made by Customs Agent Norwood in his affidavit verified July 18th, 1921, that the appearance of deponent and Mr. Schratter with the books and papers was entirely unsolicited. In this statement Mr. Norwood is mistaken, because the fact is that on October 14, 1921, according to the
 245 Government's contention two subpoenas *duces tecum* were served commanding Essgee Company of China and Hanclaire Trading Corporation to appear forthwith with their books, records and papers before the Grand Jury. The appearance with the books and papers was pursuant to the mandate of the subpoena and was not unsolicited.

Deponent calls the Court's special attention to Mr. Norwood's statement in the same affidavit that when deponent arrived at the Federal Building, the entire party proceeded to the Grand Jury room, where they were met by the Assistant United States Attorney, who took the books and records produced. The books and records so produced were produced pursuant to the order and direction of the subpoena. The United States Attorney took the books, records and papers. These
 246 books, records and papers were never surrendered by deponent.

Deponent has also read the affidavit of Assistant United States Attorney, and his statement corroborates fully that the books, records and papers were not voluntarily surrendered, but were taken by the United States Attorney. The fact remains that the books, records and papers which the Government now holds

were not surrendered. They were seized after their production was ordered pursuant to a subpoena. No opportunity was ever given to deponent or to Mr. Schratter to challenge the subpoena or to challenge the taking of the books, records and papers. 247

Neither deponent or Mr. Schratter was called as a witness pursuant to the subpoena. The books, records and papers which the Government now concededly has were the papers gotten into the Government Building upon the statement that they were called for by the subpoena, and as soon as they were brought to the Federal Building, the United States Attorney took them without consultation and without the consent of either the Essgee Company of China or the Hanclaire Trading Corporation, David Schratter or this deponent. 248

The Assistant United States Attorney makes reference to papers in the Government's possession volunteered by this deponent. The only papers which deponent volunteered were papers which deponent produced before the Grand Jury when he testified voluntarily before that body in May, 1922. Those papers consisted of certificates for shares of capital stock of Essgee Company of China, unpaid drafts which belonged to deponent, and also papers which corroborated deponent's contention that deponent was a creditor of David Schratter and Hanclaire Trading Corporation. None of the papers consisted of the records, books, account books, invoices, cables and other papers which are enumerated by the United States Attorney as in his possession, were volunteered by deponent. 249

NATHANIEL H. KRAMER.

Sworn to before me this

22nd day of July, 1922.

Norman Handel,

Com. of Deeds.

N. Y. Co. No. 167.

250 **Further Affidavit of David Schratter.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

251 The Application of HANCLAIRE
 TRADING CORPORATION and DA-
 VID SCHRATTER to compel the
 United States Attorney for the
 Southern District of New York,
 to return all books, papers, rec-
 ords, etc.

City and County of New York, ss:

David Schratter, being duly sworn, deposes and says that he is one of the applicants in this proceeding.

252 He has been told about the further additional affidavits which have been submitted by the Government, all of them verified July 18th, 1922. Deponent has read these affidavits, and now submits to the Court that there is really no issue or substantial difference of fact between the Government and deponent and the two corporations, all of the parties to the application in this and the accompanying proceeding as to the taking of the books, records and papers which the Government admits it now has.

Heretofore the books, records and papers were divided under three classifications:

"1. The books, records and papers which were taken from deponent and Mr. Kramer while they were in the Federal Building:

"2. The books, records and papers which Mr. Williams and Mr. Neustadt took from the office of Essgee Company of China and Hanclaire Trading Corporation, while deponent and Mr. Kramer were absent from the office; 253

"3. The books, records and papers belonging to deponent individually taken from the office by Mr. Williams and Mr. Neustadt."

Accepting for the moment at full face value, the statements submitted by the Government agents, deponent finds that the papers enumerated above under classification "2" must be eliminated. This elimination is forced by the fact that Mr. Williams in his last affidavit verified July 18th, 1922, swears that he has carefully examined the papers, etc., in the possession of the United States and states that all the papers and correspondence which he and Mr. Neustadt took, were returned to Kramer on October 19, 1922. 254

If Mr. Williams' statement is true that all the papers and correspondence and records which he and Mr. Neustadt took while deponent and Kramer were detained in the Federal Building, then the papers which the Government admits it has, cannot include the papers taken by Mr. Williams and Mr. Neustadt. Mr. Williams' statement by its own force, if true, eliminated also the papers included in classification "3" above mentioned. All of the papers, records and books which the Government admits it has, must therefore have been included in the papers, books and records which Kramer brought to the Federal Building, pursuant to the command of the subpoena which was served. 255

As to the books, records and papers, taken by those parties, pursuant to the direction of the subpoena, Mr. Norwood, one of the Government agents, swears that

256 the appearance of deponent and Kramer with the books and papers was entirely unsolicited. Deponent is at a loss to understand how Mr. Norwood can claim that the visit to the Federal Building was unsolicited when the fact is that the Government claims that two subpoenas *duces tecum* were served. Those subpoenas according to the Government's contention directed the appearance of Hanclore Trading Corporation and Essgee Company of China forthwith before the Grand Jury with their books, records and papers. The appearance with the books, records and papers on October 14, 1921, was in fact in obedience to the command of the subpoena which was served and was not unsolicited.

257 Mr. Norwood also states that upon arrival in the building, deponent and Kramer with the records and papers and Mr. Norwood and Mr. Dow, proceeded to the Grand Jury room, where they were met by the Assistant United States Attorney, who took the books and records produced.

258 The Assistant United States Attorney set forth his version of what occurred with regard to the papers, records and books which deponent and Kramer produced pursuant to the subpoena. He stated that at the time the papers and records were produced in the Grand Jury anteroom, he was before the Grand Jury. He was told that the records of the Hanclore Trading Corporation had arrived, and also that the papers of the Essgee Company of China had arrived. He left the Grand Jury room and came into the anteroom. He was informed by the customs agents that the records lying on the table had been produced. Mr. McGurk adds that: "Thereupon deponent took all of the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case."

The Assistant United States Attorney according to his own statement was informed by the customs agent that the records were lying on the table in the ante-room, adjoining the room where the Grand Jury was in session. The Assistant United States Attorney asked no questions. He did not ask deponent's permission or Mr. Kramer's to take the papers and he says that the Grand Jury impounded them. 259

Deponent has been advised that this taking in and of itself, even under the circumstances set forth in the papers submitted for the Government, constitute an unreasonable search and seizure of the books, records and papers involved in this proceeding. There is no denial anywhere even in this last batch of affidavits submitted for the Government that Mr. Kramer made a demand for the return of the books, records and papers from the customs agents with whom he left them while he went to attend on the arraignment under the warrant for his arrest. Mr. Kramer did make the demand on October 14, 1921, for the return of the papers and was told that he could not have them. Irrespective of what transpired in the office of the Essgee Company of China when the four customs agents were present; irrespective also of what happened when two of the customs agents remained in the office of Essgee Company of China, after deponent and Mr. Kramer went to the Federal Building, the facts admitted by the Government establish that the papers which Mr. Williams and Mr. Neustadt took from the office of the corporations involved in these proceedings, were returned. The papers which the Government now has are therefore the papers which deponent and Mr. Kramer produced pursuant to the command of the subpoena duly served. 260 261

Neither deponent nor Mr. Kramer were called pursuant to the subpoena; neither deponent nor Mr.

- 262 Kramer was given an opportunity to produce the books before the Grand Jury; neither deponent nor Mr. Kramer was given an opportunity to assert any right or prerogative which they have in law with respect to their books, records and papers. As soon as the books, records and papers which the Government now has were brought into the Federal Building, they were placed upon a table in the room near the room where the Grand Jury was in session, and the Assistant United States Attorney took all of them. He so took them with him in to the Grand Jury. The Grand Jury impounded them according to the Government's contention, and this taking is, deponent repeats, against the
- 263 violation of the guarantee against unreasonable search and seizure extended to deponent and to the Essgee Company of China and the Hanchaire Trading Corporation by the Constitution of the United States.

DAVID SCHRATTER.

Sworn to before me this
21st day of July, 1922.
Norman Handel,
Com. of Deeds,
N. Y. Co. #167.

Opinion and Decision by J. Knox.

265

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

HANCLAIRE TRADING CORPORATION and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return certain books, papers, records, etc.

266

Louis S. Posner, attorney for petitioners (Hon. Wm. M. K. Olcott, Abra. A. Silberberg of counsel).

William Hayward, United States Attorney, for the Government (Francis A. McGurk, Assistant United States Attorney, of counsel).

KNOX, D. J.:

That the papers of a corporation, as well as those of an individual, are immune from unlawful searches and seizures, is a proposition established beyond cavil; and, it is also one which this Court has no wish to impair. Such papers, are, however, subject to production in a proper case by writ of subpoena, *Hale v. Henkel*, 201 U. S. 43.

267

Upon this proceeding, the record shows that two subpoenas, one addressed to Hanclore Trading Corporation, and the other to Essgee Company of China, Inc., each calling for the production of certain books,

268 and papers before the Grand Jury, were served upon David Schratter, as president of both corporations, at the office where the said concerns carried on business, upon October 15, 1921.

In response to the subpoenas, or at least to one of them, certain papers were gathered together by one Kramer, vice president of the Hanchaire Trading Company, in the presence of Schratter, and were taken by Kramer, accompanied by Schratter and two Government officials, to the anteroom of the Grand Jury, which was then in session in the Federal Court House, in this district.

269 Arriving there, neither Kramer nor Schratter was invited before the Grand Jury; the papers were deposited upon a table in the anteroom; or, at the request of one of the aforesaid officials, were left in his custody. At about this time, the Assistant United States Attorney, in charge of this prosecution, emerged from the Grand Jury room, and taking the papers into his possession, carried them before the Grand Jury, where some of them were ordered impounded.

270 Meanwhile, Kramer and Schratter were directed to go to another part of the Federal building, and, having done so, were informed that warrants had been issued for their arrest for alleged offenses against the Customs' laws. The two men were subsequently arraigned before United States Commissioner Hitchcock, where they waived examination and were admitted to bail.

The only possible infraction of petitioners' rights that I can see which arose from the Government having acquired possession of the papers in the manner described is that Kramer and Schratter, by not being called before the Grand Jury, were thus deprived of

the opportunity of showing under oath the reasons, if such they had, why they should not be compelled to produce the documents mentioned in the subpoenas. 271
Wilson v. United States, 221 U. S. 361.

But this all happened eight months ago. This Court was then open, and has been open throughout the intervening period. Notwithstanding this fact, and notwithstanding the further circumstance that Schratter, immediately following his arrest, appeared before me to request permission to go to Europe, no showing was made, nor indeed, is it now made, that the corporations mentioned were not obliged to produce before the Grand Jury each and every paper and document called for in their respective subpoenas. 272
 In addition, the indictment against petitioners, and which, presumably, is founded, in part at least, upon the papers in question, was not returned until the May, 1922, Term of this court. There was, therefore, ample time for petitioners to have sought relief before any real prejudice came to them.

It is suggested that Schratter was in Europe until June of this year, and that, accordingly, he was in no position to assert the alleged rights of himself, or his corporations. The answer, I think, is that so far as the Government is concerned there was no call for him to go to Europe, or having been permitted to go, to remain away so long. Indeed, the Government opposed Schratter's application to leave this country, and I afforded him the privilege he sought only after his earnest solicitation, and that of one of his present attorneys. 273
 Having gone away for business reasons of his own, he has no reason to expect that, during his absence, the prosecuting officials would not proceed with the investigation and presentation of his alleged offenses before the Grand Jury. To permit him now to come into Court, and

274 without prejudice, plead that his rights have been invaded, might, and probably would, seriously affect, and prejudice the Government.

Kramer was the attorney for the two corporations. He was an officer of one of them, and I think, a stockholder of both, and intimately concerned therewith. He requested permission to appear before the Grand Jury as a witness, in order to exculpate himself from any wrongdoing charged against him. The privilege being granted, Kramer, in the course of his testimony, voluntarily produced certain papers and documents which, the record indicates, had an important bearing upon this prosecution. At any rate
275 Kramer was not indicted, and the petitioners were.

When the papers first referred to were taken to the Grand Jury anteroom, Kramer was their custodian; and their selection from the files of the corporation had been committed to him by Schratter. Being attorney for the companies and an officer of one of them, Kramer, had there been legal ground for the non-production of the papers, was then, and ever since has been, in a position to say so. He never asked to go before the Grand Jury for any such purpose, although, I do not doubt he had authority so to do had he cared to exercise it. Nevertheless, it was not until June 28, 1922, when he made an
276 affidavit in support of this motion, that he took any really affirmative action, designed to protect what he now conceives to be a gross invasion of petitioners' constitutional rights.

From what has been said, I am unable to conclude that there was an unlawful seizure of such of the papers of the corporation as were produced by Kramer at the Grand Jury anteroom; and if, by any line of reasoning such may properly be said to have been the fact, I am satisfied that both Kramer and

Schratter, by their respective course of inaction, have unequivocally waived any rights they or any of petitioners may have had to a return of such papers. 277

Complaint is made that before being asked to produce papers of the corporation Kramer and Schratter should have been informed that their arrest was imminent—it is said that the failure of the Government to furnish such information was unfair and prejudicial to petitioners. In my judgment, there is no obligation upon the Government to wave a red flag in the face of prospective defendants. Offenders against the law ordinarily do not inform officers of the law as to when and where a crime will be committed, and by the same token, it is no part of the duty of enforcing the law to give advance notice of intended arrest. Furthermore, I apprehend that such a course of procedure would, if carried out, in connection with the service of a subpoena *duces tecum*, be destructive of strict obedience to the commands of the writ, particularly, if it called for incriminating documents. 278

There is another group of papers and part of the subject-matter of this motion, which is said to have been taken from defendants' office by two Government officials who remained there after Kramer and Schratter, accompanied by two other officials, had departed for the Federal building. The facts with reference to any such papers are in serious dispute between the officials in question and two employees of the corporation, which latter are supported in part, by the affidavits of Kramer and Schratter. Much capital is sought to be made out of the incident, that four Government officials went to petitioners' office at the time of the service of the subpoenas. It is argued that therefrom I should find 279

280 evidences that a "raid" was in contemplation by the officers; and that I should accept at its face value the more or less circumstantial account of petitioners' employees as to what took place. In reply to this, it is to be observed that what transpires upon an occasion such as the call that was made at the offices of the corporations, very often has an important bearing upon subsequent events; that the witnesses are ordinarily vitally interested in all that goes on, or are employees of persons who are; and that, if the Government has only a single witness to what occurs, he is most likely to be "outsworn" upon the trial. A more or less settled custom has, in consequence, arisen (and properly, I think), that the

281 Government will have upon the scene of a particular event, a number of persons who at the appropriate time can give their version of the same. The Government, as well as a defendant, is entitled to rightfully acquired knowledge, of things said and things done in the course of the proper service of lawful process—not only this, but the Government, as well as a defendant, is entitled to the means of proving that knowledge.

282 In the present instance, two of the officials in question, viz, Messrs. Williams and Norwood, happen to be known to the Court as men who have spent many long and honorable years in the Government service. And when officers of vast experience, and known probity, give testimony as to the happenings upon an occasion wherein they were participants, that testimony is entitled to most serious and respectful consideration. And so here, I am disposed to give credence to the affidavits of these officers in preference to those submitted in opposition thereto. The substance and detail of what the officers say is not, in my opinion, improbable. Upon the

occasion to which the various deponents refer, Kramer and Schratter were doubtless desirous of currying favor with the Government agents, and, under such circumstances, prospective defendants frequently do things they would not do upon more mature consideration. I will, therefore, deny the request to return the group of papers, if any still remain in the hands of the Government, which are said to have been removed by Williams and his associate. The question of this alleged illegal seizure will doubtless arise upon the trial, and any question of fact as between the officials and the petitioners will probably resolve itself into such shape that it may be passed upon by the jury. If my confidence in the depositions just referred to has by any chance been misplaced, the error can then be corrected. 283

As to the papers produced before the Grand Jury by Kramer at the time he voluntarily appeared before that body, there is no merit in petitioners' application. 284

The petition will be denied.

August 24, 1922.

JNO. C. KNOX,
U. S. D. J.

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Stipulation.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

287

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel
the United States Attorney for
the Southern District of New
York, to return all books, papers,
records, etc.

The undersigned stipulate and agree that the record to be presented to the Supreme Court of the United States on the appeal and writ of error allowed herein, shall consist of the following papers, viz:

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1. Petition of Hanclore Trading Corporation, verified June 27th, 1922;
2. Order to show cause in these proceedings based upon the said petition, dated June 27th, 1922;
3. The affidavits of David Schratter, Nathaniel H. Kramer, Dorothy Karas and Morris Schratter, all verified June 27th, 1922;
4. The affidavits of David Schratter, verified respectively July 10th, 1922, and July 21st, 1922;
5. The affidavits of Nathaniel H. Kramer, verified respectively July 10th, 1922, and July 22nd, 1922;
6. The affidavits of Morris Schratter and Dorothy Karas, verified July 10th, 1922;

7. The affidavits of John M. Williams, verified respectively July 7th, 1922, and July 18th, 1922; 289

8. The affidavits of Edward R. Norwood, verified respectively July 7th, 1922, and July 18th, 1922;

9. The affidavits of Francis A. McGurk, verified respectively July 10th, 1922, and July 18th, 1922;

10. The affidavit of Frank Dow, verified July 7th, 1922;

11. Subpoena *duces tecum* directed to Hanclaire Trading Corporation, endorsements thereon and marshal's return thereto;

12. The opinion and decision written and rendered by Hon. John C. Knox, District Judge; 290

13. The order dated September 12th, 1922, signed by Hon. John C. Knox, District Judge;

14. The memorandum endorsed upon the order of September 12th, 1922, signed by Hon. John C. Knox, District Judge;

15. Assignment of errors;

16. Petition for writ of error and its allowance;

17. Writ of error;

18. Petition to appeal and its allowance;

19. Citation. 291

Dated, New York, September 18th, 1922.

A. A. SILBERBERG,

Attorney for Hanclaire Trading Corporation and David Schratter.

WILLIAM HAYWARD,

United States Attorney.

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Stipulation on Appeal Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

 IN THE MATTER

of

The Application of HANCLAIRE
 TRADING CORPORATION and
 DAVID SCHRATTER to compel
 the United States Attorney for
 the Southern District of New
 York, to return all books, papers,
 records, etc.

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It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, November 14, 1922.

ABR. A. SILBERBERG,

Attorney for Petitioner.

WILLIAM HAYWARD,

U. S. Attorney.

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Clerk's Certificate.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of HANCLAIRE
TRADING CORPORATION and
DAVID SCHRATTER to compel
the United States Attorney for
the Southern District of New
York, to return all books, papers,
records, etc.

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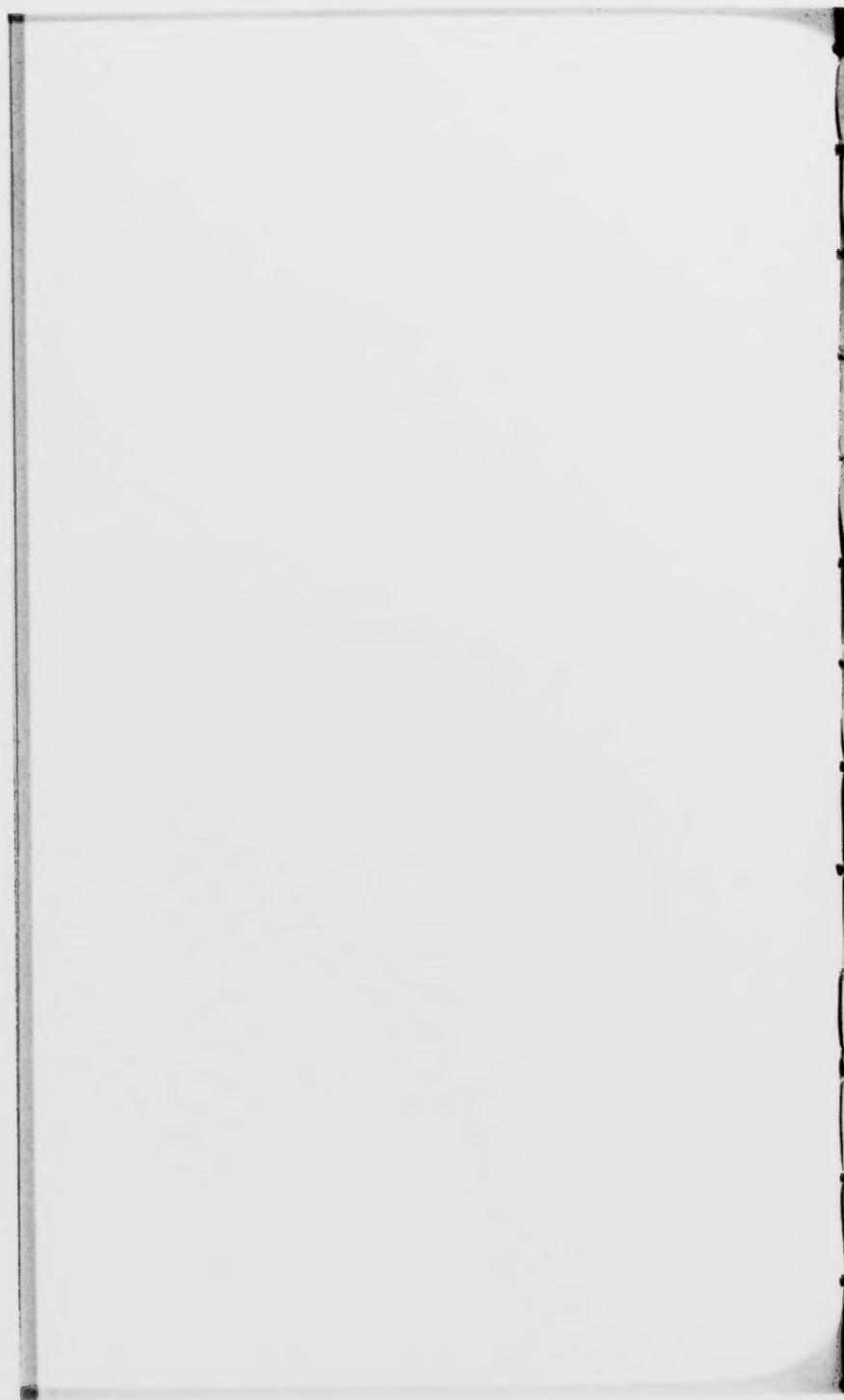
United States of America,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 14 day of November, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty ~~seventh~~.

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Alex Gilchrist, Jr.
Clerk.



FILED

MAR 24 1923

WM. R. STANSBURY

CLERK

Supreme Court of the United States

OCTOBER TERM, 1922—No. 707.

HANCLAIRE TRADING CORPORATION and
DAVID SCHRATTER,

Plaintiffs-in-Error and Appellants,

against

UNITED STATES OF AMERICA,

Defendant-in-Error and Appellee.

Appeal From and in Error to the District Court of the
United States for the Southern District of New York.

Brief for Plaintiffs-in-Error and Appellants

W. M. K. OLCOTT,

ABR. A. SILBERBERG,

Counsel for Appellants.



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Supreme Court
OF THE UNITED STATES,
OCTOBER TERM, 1922—No. 707.

HANCLAIRE TRADING CORPORATION
and DAVID SCHRATTER,
Plaintiffs-in-Error
and Appellants,

AGAINST

UNITED STATES OF AMERICA,
Defendant-in-Error
and Appellee.

**Appeal From and in Error to the District Court
of the United States for the Southern Dis-
trict of New York.**

**BRIEF FOR PLAINTIFFS-IN-ERROR AND
APPELLANTS.**

Statement.

The Hanclore Trading Corporation (a New York corporation) and David Schratter, the plaintiffs-in-error, and appellants, seek review of a final order and decree by which their application to compel the United States Attorney in and for the Southern District of New York to re-

turn to them their books, records, papers, letters, cable and memoranda, was denied (Rec., fols. 6-8).

The Hanclore Trading Corporation had its place of business in the City of New York and dealt in straw goods and other merchandise (Rec., fols. 47-48). On Oct. 14, 1921, *four* officers of the United States Customs Service entered the corporation's place of business and asked for a Mr. **Kramer**, one of the officers of the corporation and also for Mr. David Schratter another officer and one of the appellants (Rec., fol. 50). One of the four officers served Mr. Kramer with a subpoena *duces tecum* entitled in a proceeding against it, for the production forthwith before the Grand Jury of its books of account, its minute book, its invoices, its records, its papers and all memoranda covering its dealings over a period of six years (Rec., fols. 50, 164-172).

In keeping with the mandate of the subpoena, Kramer collected some of the books of account, the minute book, a lot of invoices and other papers of the Hanclore Trading Corporation. Accompanied by *two* of the government officials and by Schratter, he proceeded with the books and papers to the Federal Building in the City of New York where the Grand Jury was in session (Rec., fol. 51).

Kramer was escorted to a room which adjoins the room where the Grand Jury met, and was told to leave the books, invoices and papers which he had with him, with one of the Customs officials while he conferred with the Assistant United States Attorney (Rec., fol. 52). Kramer left the books, invoices and papers in the temporary custody of the customs official and was directed to present himself for arraignment under a warrant which

had *heretofore* been issued against him (Rec., fol. 53). Kramer demanded the return and surrender of all the books, invoices and papers which he had left in the custody of the customs official and was told that the papers would not be surrendered or returned to him or to the Hancloire Trading Corporation (Rec., fol. 54). Kramer protested against the retention of the books, invoices and papers and was told that all the books, invoices and papers which he had brought pursuant to the command of the subpoena were *taken* by the Assistant United States Attorney and that they would be submitted to the Grand Jury (Rec., fol. 55).

All the books, invoices and papers were seized by the government officials before Kramer or any other officer of Hancloire Trading Corporation was asked to produce them before the Grand Jury, and before Kramer or any person was called as a witness pursuant to the subpoena which had been served and before Hancloire Trading Corporation had an opportunity to challenge the subpoena (Rec., fols. 56-57).

Two of the four customs officials who visited the Hancloire Trading Corporation's offices, remained and *raided* the offices. The desks and files of the Hancloire Trading Corporation were ransacked and in the absence of the Hancloire Trading Corporation's officers, the customs officials took from the desks and files additional books, invoices and papers (Rec., fols. 57-58). These additional books, invoices and papers were delivered to the United States Attorney, and included general ledgers, customers ledgers, invoices for merchandise purchased, invoices for merchandise shipped, letters and cables relating to the imports and business which Hancloire

Trading Corporation effected before October 14, 1921 (Rec., fols. 59-60).

The United States Attorney refused to return any of the books, invoices, letters, cables or papers (Rec., fol. 62) and has used the books, invoices and papers in the examination of the charges which are included in an indictment which was returned in May, 1922—seven months after the seizure and the raid (Rec., fol. 62). The United States Attorney proposes further to use the same books, invoices and papers upon the trial of the indictment (Rec., fol. 64) and the appellants contend that the taking of the books, invoices and papers did and the use of them did and will violate the rights of the Hancloire Trading Corporation as the same are preserved to it under the Fourth and Fifth Amendments of the United States Constitution (Rec., fol. 64).

The appellant Schratter added that his *individual papers* were seized by the customs officials (Rec., fols. 72-73). He maintained that the two customs officials who remained in the place of business of the Hancloire Trading Corporation after he and Kramer went to attend before the Grand Jury, seized his individual papers, records, letters and memoranda (Rec., fol. 76). Schratter charged that his individual papers were also delivered to the United States Attorney and that those papers were in fact used by the Grand Jury in support of and as the basis of the indictment which was returned against him (Rec., fol. 76).

Schratter pleaded that before October 14, 1921, the day when the "raid" was executed, he had arranged to sail for Europe. He was arrested under a warrant on October 14, 1921, and obtained the court's leave to go abroad. Schratter

sailed on October 15, 1921, and remained abroad with the court's full sanction, until the 9th of June, 1922. While in Europe, Schratter learned that he had been indicted jointly with the Hanchaire Trading Corporation, and that he and his corporation were charged with the violation of the laws of the United States relating to introducing into the commerce of the United States goods and merchandise upon and under false valuations (Rec., fol. 78).

Schratter returned to New York on June 9, 1922, and pleaded "*not guilty*" to the charges on June 12, 1922. He entered a similar plea on behalf of the Hanchaire Trading Corporation on June 19, 1922, and on June 27, 1922, joined in the prayer that the United States Attorney shall be directed to deliver and surrender to him and to Hanchaire Trading Corporation all the books, invoices, papers, letters, cables and memoranda which were taken and seized (Rec., fols. 65, 83).

District Judge Knox who heard the application, accepted the statements which were urged by the appellants that (1) the books, invoices and papers of Hanchaire Trading Corporation were gathered by Kramer in response to the subpoenae; (2) that neither Kramer nor Schratter was called as a witness by or before the Grand Jury; (3) that the books, invoices and papers brought pursuant to the subpoenae were left in the custody of one of the customs officials; (4) that one of the assistant United States Attorneys took the books, invoices and papers from the customs official, and (5) that the Grand Jury ordered the books, invoices and papers impounded (Rec., fols. 268-269).

The United States Attorney admitted that he had in his possession of the books, invoices and

papers which Kramer brought pursuant to the mandate of the subpoena, the following, viz. (Rec., fols. 235-239):

Minute book of the Hancloire Trading Co.
Stock certificate book of the Hancloire Trading Co.

Combined stock and stock ledger of the Hancloire Trading Co.

Two ledgers.

One import sales book.

One import book giving a list of importation returns.

One combined sales export and return export book.

One combined purchase journal and purchase return book.

One purchase journal.

The following invoices all covering merchandise shipped by Continentale Handels Atkiengesellschaft, Berlin, Germany, to: :

Impex Trading Company, covering the period April, May and June, 1921.

Essgee Company of China, covering period September, 1920, and January, February, March and April, 1921.

Amjar Corporation, covering period October, November and December, 1920.

A sheaf of marconigrams, coded, from Berlin, Germany, addressed to Amjar Corporation during October, November and December, 1920.

Drafts drawn by Continentale Handels Atkiengesellschaft, Berlin, Germany, against Impex Trading Company during May, 1921; against Essgee Company of China, during February, March and April, 1921.

Memo of agreement between Mercier, of Montreal and Hanclaire Trading Company, covering *inter alia*, the fixing of prices of merchandise, dated October 6, 1921. Mercier is the Hanclaire's Canadian representative.

Letter from Mercier to Kramer dated October 7, 1921.

Letter from Capporni & Co., Ltd., Montreal, to Kramer, dated September 29, 1921.

Personal tax assessment for Morris Schratter and David Schratter by City of City of New York, for year 1922.

Quadruplicate to consular invoices of Essgee Company of China and Impex Trading Company, covering February, March, April, May and June, 1921.

The appellants contended in the District Court that to permit the United States Attorney to keep and to use these books, invoices and papers would upon the admitted facts constitute an infraction of the rights which were secured to them by the Fourth and Fifth Amendments to the Constitution of the United States. That the taking and the use of the books, invoices and papers constituted an unreasonable search and seizure of those books, invoices and papers. Also that by the taking and use of the same books, invoices and papers, the appellants were and will be compelled in a criminal action to be witnesses against themselves.

District Judge Knox recognized that the taking and use of the Hanclaire Trading Corporation's books, invoices and papers amounted to an infraction of its rights, especially because Hanclaire Trading Corporation was not afforded the opportunity to show or to state the reasons, if

any, it had why the books, invoices and papers should not be produced (Rec., fols. 270-271), yet concluded that because Schratter went to Europe Hancelaire Trading Corporation had "*by the course of inaction*" waived any rights which it may have had to the return of the papers, etc. (Rec., fols. 273-277).

A final order denying the application for the return of the books, invoices and papers followed (Rec., fol. 8). Hancelaire Trading Corporation and David Schratter prayed for and were allowed an appeal and a writ of error to this Court to enable them to review the denial of their application. In the meantime a supersedas has been granted (Rec., fol. 27).

Assignments of Error.

The appellants, and plaintiffs-in-error have assigned the following grounds of error (Rec., fols. 11-17):

FIRST: The District Court of the United States in and for the Southern District of New York erred in denying the petition of the said Hancelaire Trading Corporation and David Schratter for an order directing the United States Attorney in and for the Southern District of New York to surrender to them possession of books, records and papers belonging to them or taken from them.

SECOND: The District Court of the United States erred in deciding that Hancelaire Trading Corporation and David Schratter waived their right to obtain possession of books, records and papers taken from them,

or either of them, by their delay in applying for an order to return to them their books, records and papers from October 14th, 1921, until June 27th, 1922.

THIRD: The District Court of the United States erred in deciding that Hanclore Trading Corporation and David Schratter waived their constitutional guarantee against unreasonable search and seizure by waiting until June 27th, 1922, before they made the application to compel the return of their books, papers and records.

FOURTH: The District Court of the United States erred in deciding that to permit the United States Attorney in and for the Southern District of New York to have, retain and use against Hanclore Trading Corporation and David Schratter their books, records and papers, would not be a violation of the right assured to them by the 4th and 5th Amendments to the Constitution of the United States which protect them and each of them against unreasonable search and seizure of their said books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

FIFTH: That the District Court of the United States erred in deciding that the use by the United States Attorney before the Grand Jury of the United States of the books, records and papers which were taken from Hanclore Trading Corporation and David Schratter in connection with and as

a basis of the indictment returned against them, was not a violation of the right assured to Hanclore Trading Corporation and David Schratter by the 4th and 5th Amendments to the Constitution of the United States which protect them against unreasonable search and seizure of their books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

SIXTH: The District Court of the United States erred in determining and deciding that the rights guaranteed to Hanclore Trading Corporation and David Schratter under the 4th and 5th Amendments to the Constitution of the United States were not violated by the taking by the United States Attorney in and for the Southern District of New York of the books, records and papers which belonged to and were the property of Hanclore Trading Corporation and David Schratter.

SEVENTH: The District Court of the United States erred in its refusal to find and decide and determine that the taking of the books, records and papers, fully described in the original petition of Hanclore Trading Corporation and David Schratter, constituted an unreasonable search and seizure of the said **books, records and papers and that the said taking of said books, records and papers was in violation of the rights assured to Hanclore Trading Corporation and David Schratter by the 4th and 5th Amendments to the Constitution of the United States.**

POINTS.

I.

Hanclaire Trading Corporation and David Schratter are prosecuting, both, appeals and writ of error because there may be some doubt as to whether their case should be brought up on appeal or by writ of error. Under such circumstances, both an appeal and writ of error may be prosecuted and this court when it comes to examine the case will determine by which of them it is properly brought up and proceed accordingly.

Hurst v. Hollingsworth, (94 U. S., 111).

Plymouth Mining Co. v. Amador Canal Co. (118 U. S. 264).

Kenaday v. Simmott (179 U. S., 606).

Lockman v. Lang (132 Fed. Rep. 1).

II.

The immunity from unlawful searches and seizures extends to the papers and effects of the Hanclaire Trading Corporation.

That the Hanclaire Trading Corporation was entitled to protection of and security in its papers and effects against unreasonable searches and seizures, is now well established. District Judge Knox recognized this doctrine (Rec., fol. 267) for which there is authoritative precedent.

Silverthorne Lumber Co. v. United States (251 U. S. 385);

In re Tri-State Coal & Coke Co. (253 Fed. 605);

United States v. McHie (194 Fed. 894);
Coastwise Lumber & Supply Co. v. United States (259 Fed. Rep. 847);
Hale v. Henkel (201 U. S. 43).

Mr. Justice Brown wrote in *Hale v. Henkel* (*supra*) that the immunity from unreasonable search and seizure extends to the papers and effects of a corporation (p. 75):

"Although, for the reasons above stated, we are of the opinion that an officer of a corporation which is charged with a violation of a statute of the State of its creation, or of an act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the Fourth Amendment, against *unreasonable searches*. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected under the Fourteenth Amendment, against unlawful discrimination. *Gulf, etc., Railroad Company v. Ellis*, 165 U. S. 150, 154, and cases cited. Corporations are a necessary feature of modern business activity, and their aggregated capital has become the source of nearly all great enterprises."

Mr. Justice Holmes reaffirmed the same doctrine in *Silverthorne Lumber Co. v. United States* (*supra*).

The Silverthorne Lumber Co., a corporation, refused to comply with the court's order to produce its books and papers and urged that the order directing the *production* denied it the constitutional guaranty against unreasonable searches and seizures. There, two individuals interested in the corporation were charged with a fraud against the United States. While they were detained upon the charge, representatives of the Department of Justice and the United States Marshal went to the company's place of business and removed the company's books, papers and documents. The court directed a return of the books, papers and records so taken, but impounded photographs of the records. Subpoenas were thereafter served for the *production* of the original records. The company refused to produce them and pleaded that the original taking constituted an unreasonable seizure. An order of contempt followed and this Court concluded that the corporation was entitled to immunity from unreasonable search and seizure. Mr. Justice Holmes wrote that (p. 392):

"But the rights of a corporation against unlawful search and seizure are to be protected even if the same results might have been achieved in a lawful way."

In *Coastwise Lumber & Supply Co. v. United States* (*supra*), the Circuit Court of Appeals (2nd Circuit) recognized the right of a corporation to immunity from unreasonable search and seizure under the Fourth Amendment. Mr. Justice Manton wrote that (p. 849):

"I regret that I cannot concur in the prevailing opinion. The majority of the court do not express their opinion as to this seiz-

ure. But the seizure of the books and papers in this regard is illegal and therefore the constitutional rights of the petitioner were violated."

In re Tri-State Coal & Coke Co. (supra) the corporation made an application to compel the return of certain books and papers. Judge Thomson cited with approval from *Hale v. Henkel (supra)* and added (p. 606) that:

"These cases all recognize, not only the binding force of this constitutional provision but its high necessity to protect the sanctity of the home and the privacies of life; that this protection is so broad and ample that it embraces all persons, even those accused of crime; and that the duty of giving it full effect rests upon all intrusted under our federal system with the enforcement of the laws."

In addition to these binding precedents, we urge that the same considerations of fundamental policy which protect corporations in their property and guarantee them the equal protection of the laws and due process of law, operate to preserve them from the oppression and lawlessness that inhere in an unreasonable seizure of private papers or records.

III.

The seizure by the United States Attorney of the Hanclaire Trading Corporation's books, invoices and papers constituted an unreasonable seizure. By the use of the same books, invoices and papers as the basis for an indictment against it, the Hanclaire Trading Corporation was compelled to be, and by the future use of the same books and papers Hanclaire Trading Corporation will be compelled to be a witness against itself in a criminal cause.

The appellants asked that the United States Attorney shall be directed to surrender three sets of books, invoices and papers. These included:

(a) Those books, invoices and papers which were brought to the Federal Building pursuant to the mandate of the subpoena (Rec., fols. 50-57).

(b) Those books, invoices and papers which the two customs officials took from the desks and files of Hanclaire Trading Corporation while its officers were in attendance under the subpoena (Rec., fols. 57-61); and

(c) Those of David Schratter's papers which the customs officials took (Rec., fols. 75-76).

Three of the four customs officials who aided in the raid on the offices of the Hanclaire Trading Corporation, denied that they retained any of the corporate or individual books or papers which they concededly took without any sem-

blance of right from the offices of the Hancelaire Trading Corporation. The United States Attorney argued that he had in his possession certain papers which were surrendered by Kramer when he was allowed to testify before the Grand Jury in his own behalf and also the *books, invoices and papers which had been brought to the Federal Building pursuant to the mandate of the subpoena which had been served.*

We will limit our demands to the books, invoices and papers which the United States Attorney took, because as to those papers, invoices and books, there is no dispute of fact.

The record shows that on October 14, 1921, four customs officials entered the Hancelaire Trading Corporation's place of business and served upon Kramer, then its president a subpoena *duces tecum.* The subpoena directed attendance *on the same day* before the Grand Jury and the production of all books, papers and records of transactions since 1915 (Rec., fols. 50; 164-172). In keeping with the mandate of the subpoena, Kramer collected the books of account, the minute book, some invoices and other papers and with *two* of the four customs officers and with David Schratter, proceeded to the Federal Building in the City of New York (Rec., fol. 51).

When Kramer and Schratter arrived at the Federal Building, they were escorted to a room which adjoins the room where the Grand Jurors were then in session. One of the customs officers who had accompanied Kramer, suggested that he should leave the **books and papers** with one of the other customs officials until Kramer would be called upon to attend before the Grand Jury (Rec., fol. 52). Kramer so left the books and

papers. He was told that a warrant had been issued for the arrest of himself and of Schratter (Rec., fol. 53). Kramer *immediately* demanded a return and surrender of the books, invoices and papers which he had left with one of the customs officials, and was told that the books and papers would not be surrendered or returned to him or to the Hanchaire Trading Corporation (Rec., fol. 54).

Kramer protested against the retention of the books, invoices and papers, and was told that the United States Attorney had *taken* all the books and papers for submission to the Grand Jury. The Hanchaire Trading Corporation did not surrender its books, invoices and papers. Nor did it consent to the use of its books, invoices and papers by the Grand Jurors.

The books, invoices and papers were brought to the Federal Building pursuant to the mandate of a *subpoena duces tecum* (Rec., fol. 56), and before any witness was called on to produce the books, invoices and papers (Rec., fols. 56-57), the Assistant United States Attorney seized all the books, invoices and papers which he had subpoenaed. The Assistant United States Attorney detailed his seizure and retention of the books, invoices and papers and averred that (Rec., fols. 230-232):

" * * * at the time the papers and records were produced in the Grand Jury ante room, deponent was in before the Grand Jury. Upon being informed that the records of the Hanchaire and Essgee Companies had arrived, deponent left the Grand Jury, came into the ante room where Schratter, Kramer and Customs Agents Norwood and Dow were present, and was informed by the Customs Agents in the presence of Schratter and

Kramer, that the records then and there lying on the table had just been produced. Thereupon deponent took all of the said records, books and papers and brought them into the Grand Jury which then and there impounded them.

* * * * *

“There are now in the government's possession exclusive of the records and papers volunteered by Kramer, the *following produced in response to the two subpoenas* (Rec., fols. 235-239):

Minute book of the Hancloire Trading Co.
Stock certificate book of the Hancloire Trading Co.

Combined stock and stock ledger of the Hancloire Trading Co.

Two ledgers.

One import sales book.

One import book giving a list of importation returns.

One combined sales export and return export book.

One combined purchase journal and purchase return book.

One purchase journal.

The following invoices all covering merchandise shipped by Continentale Handels Aktiengesellschaft, Berlin, Germany, to:

Impex Trading Company, covering the period April, May and June, 1921.

Essgee Company of China covering period September, 1920, and January, February, March and April, 1921.

Amjar Corporation, covering period October, November and December, 1920.

A sheaf of marconigrams, coded, from Berlin, Germany, addressed to Amjar Corporation during October, November and December, 1920.

Drafts drawn by Continentale Handels Aktiengesellschaft, Berlin, Germany, against

Impex Trading Company during May, 1921; against Essgee Company of China, during February, March and April, 1921.

Memo of agreement between Mercier, of Montreal and Hanclore Trading Company covering *inter alia*, the fixing of prices of merchandise, dated October 6, 1921. Mercier is the Hanclore's Canadian representative.

Letter from Mercier to Kramer dated October 7, 1921.

Letter from Capporni & Co., Ltd., Montreal, to Kramer, dated September 29, 1921.

Personal tax assessment for Morris Schratter and David Schratter by City of New York, for year, 1922.

Quadruplicates of consular invoices of Essgee Company of China and Impex Trading Company covering February, March, April, May and June, 1921."

That the taking of the Hanclore Trading Corporation's books, invoices and papers constituted an unwarranted and unlawful seizure, is fully supported by a long line of well-adjudicated cases.

The only process which the customs officials had when they went to the place of business of Hanclore Trading Corporation, was a *subpoena duces tecum* addressed to Hanclore Trading Corporation. That subpoena commanded Hanclore Trading Corporation to appear before the grand inquest of the body of the People of the United States of America for the Southern District of New York at 11 o'clock in the forenoon of October 14, 1921, to testify and give evidence in regard to an alleged violation of the laws of the United States (Rec., fols. 164-165). The subpoena commanded the production of all books, memoranda, papers, records, invoices,

contracts, undertakings, etc., covering a period between January 1, 1915, and October 14, 1921 (Rec., fols. 165-172).

Pursuant to the command in the subpoena which was served the very day when the books, papers and records were to be produced, Kramer collected a number of the books of account, the minute book, invoices and other papers of Hanclore Trading Corporation and proceeded to the Federal Building. Kramer was not called as a witness. Kramer was not asked to produce the books and papers which had been subpoenaed. The customs officials asked Kramer who had the Hanclore Trading Corporation's books and papers, to allow them to hold all the books and papers while he talked with the United States Attorney, and as soon as the United States Attorney came from the Grand Jury room, the officer gave him the Hanclore Trading Corporation's books and papers. The United States Attorney asked no questions. He called no witness, and in arbitrary, arrogant and autocratic fashion, took all the books and papers into the Grand Jury room.

That the *subpoena duces tecum* did not authorize the seizure of the books and papers called, is now well settled. Mr. Justice McKenna wrote for this Court in *Hale v. Henkel* (*supra*) that (p. 80):

“ * * * the service of a subpoena is but the delivery of a paper to a party—is open and above-board. There is no element of trespass or force in it. It does not disturb the possession of property.”

Nor does a subpoena give a right to search another's house, or open his safe, or ransack

his papers. (*Elting v. United States*, 27 Ct. Cl. 158).

Hale v. Henkel (supra) is also authority for the statement that a party served with a subpoena has an inherent right to challenge the subpoena and have a judgment of the court upon his challenge before the subpoena is finally enforced. Hanelaire Trading Corporation was not afforded the opportunity to challenge the subpoena. The seizure by the United States Attorney of the Hanelaire Trading Corporation's books and papers was under the circumstances which he himself outlines, unwarranted in law.

It is true that no physical force was used in the *taking* of the books and papers, but the use of such or of any force, is not necessary to constitute an unreasonable search and seizure. See *Boyd v. United States* (116 U. S. 616). In that case the proceedings were on the *civil* side of the Court for the forfeiture of certain plate glass. The government claimed that there had been a fraudulent under-valuation and an insufficient payment of duty. The government invoked an order which the court made (pursuant to an enactment of 1874) directing the party there charged with the under-valuation to produce his books, records and papers, and in default thereof, to stand confessed of the charge.

The production of the books, records and papers was refused, and the party urged that the order *directing the production* was an unreasonable search and seizure of his papers. There of course was no claim in the *Boyd* case that force had been used. The only point made in the *Boyd* case was that the order was "*ipso facto*" an unreasonable search and seizure although it did not authorize the search or the seizure of the books.

Mr. Justice Bradley wrote for this Court that (p. 621):

“ * * * but it (the statute) declares that if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is tantamount to compelling their production; for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of. It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers are wanting, and to this extent, the proceeding under the Act of 1874 is a mitigation of that which was authorized by the former acts; but it accomplishes the substantial object in those acts in forcing from a party evidence against himself. It is our opinion therefore that a compulsory production of a man's papers to establish a criminal charge against him, or to forfeit his property is within the scope of the Fourth Amendment to the Constitution in all cases a search and seizure would be; because it is a material ingredient, and affects the sole object and purpose of search and seizure.”

Mr. Justice Bradley reiterated and adopted with full approval (in the same case) Lord Camden's immortal words that (pp. 627-628):

“Papers are the owner's goods and chattels, they are his dearest property; and are so far from enduring a seizure, that they will hardly bear an inspection; and though the eye cannot by the laws of England be guilty of a trespass, yet where private papers are removed and carried away the secret nature of those goods will be an aggravation of the trespass, and demand more considerable

damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and therefore, it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society."

This Court's conclusion was that (pp. 630, 634, 635):

"The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. *It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation, but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other.* (Italics ours.)

"Can we doubt that when the Fourth and Fifth Amendments to the Constitution of the United States were penned and adopted, the language of Lord Camden was relied on as expressing the true doctrine on the subject of searches and seizures, and as fur-

nishing the true criteria of the reasonable and 'unreasonable' character of such seizures * * * It seems to us that the question cannot admit of a doubt. They never would have approved of them. The struggles against arbitrary power in which they had been engaged for more than twenty years would have been too deeply engraved in their memories to have allowed them to approve of such insidious disguises of the old grievance which they had so deeply abhorred.

"As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, * * * and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure—and an unreasonable search and seizure—within the meaning of the Fourth Amendment." (Italics ours.)

The Fourth Amendment guarantees security to all people in their papers and effects against unreasonable seizure and the Fifth Amendment protects every person from being compelled, in any criminal case, to be a witness against himself. These guaranties against unreasonable seizures and of being compelled to be a witness in a criminal case have so often been considered together in the decisions, that pursuing the course of authority we shall likewise treat together both guaranties as applied to the facts disclosed by the record. They have been carefully considered and enforced in

- Boyd v. United States* (116 U. S. 616).
Weeks v. United States (232 U. S. 383).
Hale v. Henkel (201 U. S. 43).
United States v. Wong Quong Wong (94 Fed. 832).
United States v. Mills (185 Fed. 318).
United States v. Abrams (230 Fed. Rep. 313).
Counselman v. Hitchcock (142 U. S. 547).
Flagg v. United States (233 Fed. Rep. 481).
Gouled v. United States (255 U. S. 298).

In *Weeks v. United States* (*supra*), police officers of the State of Missouri entered the defendant's home while he was absent and took therefrom certain lottery tickets and letters. Before the trial of the indictment returned against the defendant, he made application for a direction that all papers taken from his home be returned to him. The court directed the return of some of the papers and refused to direct the return of others of the papers seized. The latter were used against him on the trial of the indictment. This Court held that the refusal to return the papers was error. Mr. Justice Day, said (pp. 391-393):

"The effect of the Fourth Amendment is to put the Courts of the United States and Federal officials in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures, under the guise of law. This protection reaches all alike, whether accused of

crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgment of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

"What then is the present case? Before answering that inquiry specifically, it may be well, by a process of exclusion, to state what it is not. It is not an assertion of the right on the part of the Government, always recognized under English and American laws to search the person of the accused when legally arrested to discover and seize the fruits and evidences of crime. This right has been uniformly maintained in many cases. (Citing authorities.) Nor is it the case of testimony offered at a trial where the court is asked to stop and consider the illegal means by which proofs, otherwise competent, were obtained, of which we shall have occasion to treat later in this opinion. Nor is it the case of burglar's tools or other proofs of guilt found upon his arrest within the control of the accused.

The case, in the aspect in which we are dealing with it, involves the right of the court in a criminal prosecution to retain for the purposes of evidence the letters and correspondence of the accused seized in his house in his absence and without his authority, by a United States Marshal holding no warrant for his arrest and none for the search of his premises. The accused, with-

out awaiting his trial, made timely application to the court for an order for the return of these letters as well as other property.

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. (Italics ours.)"

"The efforts of the court and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

The opinion then considers various of the authorities bearing on the subject under consideration and proceeds (pp. 396, 397):

"The Government also relies upon *Hale v. Henkel*, 201 U. S. 43, in which the previous cases of *Boyd v. United States* (*supra*); *Adams v. United States* (*supra*); *Interstate Commerce Commission v. Baird*, 194 U. S. 25, and *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, are reviewed, and wherein it was held that a *subpoena duces tecum* requiring a corporation to produce all its contracts and correspondence with no less than six other companies, as well as all letters received by the corporation from thirteen other companies located in different parts of the United States, was an unreasonable search and seizure within the Fourth Amendment, and it was there stated that (201 U. S. 76) 'an order for the production of books and papers may constitute an un-

reasonable search and seizure within the Fourth Amendment. While a search ordinarily implies a quest by an officer of the law and a seizure contemplates a forcible disposition of the owner, still, as we held in the Boyd case, the substance of the offense is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person, be he individual or corporation, is entitled to protection'." (Italics ours.)

The opinion concludes (p. 398) thus:

"We, therefore, reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States acting under color of his office in direct violation of the constitutional rights of the defendant; that having made a reasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and that the court should have restored these letters to the accused. * * *

"The record shows that what they (the policeman) did by way of arrest and search was done before the finding of the indictment in the Federal Court, under what supposed right or authority does not appear. What remedies the defendant may have against them we need not inquire, as the Fourth Amendment is not directed to individual misconduct of such officials. *Its limitations reach the Federal Government and its agencies.*" *Boyd's Case*, 116 U. S., *supra*, and see *Twining v. New Jersey*, 211 U. S. 78.

In *United States v. Mills*, (185 Fed. Rep. 318), Judge Lacombe was called on to determine the

propriety of a petition which asked that the United States Marshal and District Attorney return certain books and papers to the defendant. The defendant had been indicted for conspiracy to defraud the United States in connection with the importation of merchandise. A warrant was issued and pursuant to it the Marshal seized the defendant's books and papers which covered his entire business including records which related to the charge against the defendant. The court held that the seizure was improper. The District Attorney and the Marshal were directed to surrender the books and papers seized, in spite of the insistence of the District Attorney that the books and papers showed the commission by the defendant of offenses against the United States. The learned Court said (p. 319):

"It may be highly desirable, from the point of view of a prosecuting officer, that some such comprehensive seizure of the person's books and papers should be had; the trial of an offense charged may be thus facilitated, and it may be easier to discover that the same person has been guilty of other similar offenses. It may promote the ends of justice that the right to search and seize should be strengthened rather than impaired. It may be that there is 'much less danger of doing injustice to the individual than there is of overlooking the obligations of those in authority to organized society.' Opinions will differ as to which is the wiser public policy. But whatever may be one's individual opinion, it is difficult to see how a subordinate Federal Court can sustain such a wholesale seizure as we have here, so long as the decision of the Supreme Court, in *Boyd v. United States* (116 U. S. 616) remains unreversed and unqualified. It cer-

tainly has never been reversed, and the subsequent decisions of the Supreme Court in which it has been referred to, do not indicate that the practice followed in this case should be approved."

In *Boyd v. United States* (116 U. S. 616), this Court had under consideration the validity of an Act of Congress which authorized a court of the United States on motion of the Government Attorney to require a person charged with a penalty or forfeiture under the Revenue Laws to produce in court his books, papers and records. The defendant produced his records and claimed that he was thereby compelled to furnish evidence against himself in a criminal proceeding and that the production was also an unwarranted seizure in violation of the Fourth and Fifth Amendments to the Constitution. His contention was sustained. In the course of the opinion this Court cited with approval Lord Camden's decision in *Entick v. Carrington*, 19 Howell's State Trials 1029, Mr. Justice Bradley added (p. 633):

"We have already noticed the intimate relation between the two amendments. They throw great light on each other. For the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man 'in a criminal case to be a witness against himself' which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the Fourth Amendment. And we have been un-

able to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms."

Earlier in the opinion occurs the following pertinent passage (p. 622):

"It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers, are wanting, and to this extent the proceeding under the Act of 1874 is a mitigation of that which was authorized by the former acts; but it accomplishes the substantial object of those acts in forcing from a party evidence against himself. *It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be; because it is a material ingredient and effects the sole object and purpose of a search and seizure.*" (Italics ours.)

In *Flagg v. United States* (*supra*), the court dealt with facts which in many ways resemble the facts established by the admissions of the government officials in the case at bar. The papers involved in the *Flagg* case were seized without a search warrant. They were examined by the government officials and then returned to the defendant. In aid of an effort to convict, the government offered evidence which the officials had gleaned from the seized papers. The conviction which followed was reversed. Judge Coxe wrote that (pp. 482-486):

“The defendant insists that his books and papers were taken possession of by the postal authorities of the United States under the direction of the Department of Justice without process or legal authority of any kind. This matter might have been made perfectly clear but it has been left largely to inference and conjecture. Who the police officers were, where they got their orders, who the United States official was who apparently was directing the so-called ‘raid’ does not satisfactorily appear, but it does appear that the papers and books were all carted to the federal building where they remained for several years and where the government officials worked over them for 18 months, although the defendant applied for their return September 26th, 3 days after they were seized. Some conclusions may be left to presumption, and it is impossible to believe, in the face of these facts, that the United States, acting through its accredited agents, was not responsible for the arrest of the defendant and the seizure of his property. To attribute such an elaborate and carefully prepared proceeding as was planned to convict the defendant, to a few local patrolmen or to some unknown parties, in the face of the fact that the property was immediately carted to the federal courthouse and remained there till the federal officials had obtained all the information desired, makes too severe a demand upon the imagination.

The fact that the government officials returned the books after they had worked over them for a year and a half and had obtained all the information possible, is not of the least importance in considering the question of the initial illegality. We have, then:

“First, a seizure of the defendant’s books and papers without warrant or legal pro-

cess of any kind—an unlawful entry and unlawful taking.

“Second, a presumption, well nigh conclusive, that the United States, whose agents took the books and papers into custody, and who alone was interested in prosecuting the defendant, was the party who made or instigated the unlawful seizure through its agents and servants.

“The question then is reduced to this—can a party be convicted of a crime upon proof procured from books and papers which have been taken from him by force and without a pretense of legal authority?

“Will the people be secure in their persons, papers and effects if seizures and searches made without pretense of legality are sustained by the courts?

“If parties without authority may enter another's place of business and carry away all his books and papers and use them in criminal proceedings against him, the constitutional amendments and the laws passed to prevent such invasions of his rights become dead letters. There are numerous cases which hold that where an officer executing a legal search warrant seizes property, not mentioned in the warrant, which may properly be considered in evidence, the right to introduce it is not lost by reason of its unlawful seizure, but we know of no case where a conviction has been sustained upon evidence obtained by such methods as were here employed.

“We do not deem it necessary to discuss all the questions mooted on the briefs relating to the admission and exclusion of evidence at the trial. We prefer to rest our decision upon the broad ground that the constitutional rights of the defendant were violated by the unlawful seizure of his books and papers by the officers and agents of the

United States acting without warrant or pretense of legal authority."

The fact that the papers, records, letters and cables involved in these proceedings have no pecuniary value but evidential value only, cannot justify their seizure. The object of the Fourth Amendment to the Federal Constitution was to prevent *all* invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of life. (*Boyd v. United States*, 116 U. S. 630). The essence of the offense prohibited by the Fourth Amendment of the Constitution is the invasion of one's indefeasible right to personal security, personal liberty and private property. In the *Boyd* case (*supra*) Judge Bradley quoted from the opinion of Lord Camden, as the same is recorded in the famous case of *Entick v. Carrington* (19 Howell State Trials 1029) that:

"Papers are the owner's goods and chattels. They are his dearest property and are so far from enduring a seizure that they will hardly bear inspection."

To the same effect is the pronouncement of Judge Cooley in his work on Torts, Vol. II, p. 623. He writes that:

"An important civil right is intended to be secured by the provisions incorporated in the National and State Constitutions, which in substance declare that unreasonable searches and seizures shall be unlawful, and that all persons shall be secure in their persons, houses, papers and effects against them. In their origin these provisions had in view the mischiefs of such oppressive action by the Government or its officers as the

seizing of papers to obtain evidence of intended crimes; but their protection goes much beyond such cases; it justly assumes that a man may have secrets of business, of friendship, or of more tender sentiments, to which his books, papers or letters may bear testimony, but with which the public have no concern; that he may even have secrets of shame which are so exclusively his own concern that others have no right to pry into or discuss them."

In *Gouled v. United States (supra)*, a judgment of conviction was assailed because the judgment was supported by and based upon papers which had been taken from the defendant without lawful process. The defendant Gouled was suspected of crime, and an officer of the Intelligence Department posing as his friend, entered his office and carried away some papers. This taking of the papers by a government official was claimed to constitute an unreasonable search and seizure. Mr. Justice Clarke wrote for this Court upon the questions pertinent to the point under consideration *inter alia* that (p. 303):

"It would not be possible to add to the emphasis with which the framers of our Constitution and this court (in *Boyd v. United States*, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524, in *Weeks v. United States*, 232, U. S. 383, 34 Sup. Ct. Rep. 341, Ann. Cas. 1915C, 1177, and in *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 64 L. ed. 319, 40 Sup. Ct. Rep. 182) have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two Amendments. The effect of the decisions cited is: that such rights are declared to be indispensable to

the 'full enjoyment of personal security, personal liberty, and private property;' that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guarantees of the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts, or by well-intentioned but mistakenly over-zealous executive officers.* *

"The prohibition of the Fourth Amendment is against all unreasonable searches and seizures; and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers, would be an unreasonable, and therefore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of the papers of the owner would be as much invaded, and the search and seizure would be as much against his will in the one case as in the other; and it **must** therefore be regarded as equally in violation of his constitutional rights.* * *

"That the papers involved are of no pecuniary value is of no significance. Many papers, having no pecuniary value to others, are of the greatest possible value to the owners, and are property of a most important character (*Boyd* case, 116 U. S. 627, 628, 29 L. ed. 749, 750, 6 Sup. Ct. Rep. 524);

and since those here involved possessed 'evidential value' against the defendant, we must assume that they were relevant to the issue."

The United States Attorney seized the Hanclore Trading Corporation's books and papers in October, 1921, and continued his search and investigation of their contents until May, 1922. He prevailed upon the Grand Jurors then in session to return an indictment against the appellants, and used the books, invoices and papers which he had seized, as the basis for the indictment.

Between October 15, 1921, and the date when the indictment was returned (May, 1922) Schratter, the only active person interested in Hanclore Trading Corporation, was in Europe by leave of the court. Schratter remained abroad until June 9, 1922 (Rec., fol. 78). He learned of his indictment jointly with the Hanclore Trading Corporation while in Europe and returned and entered a plea of not guilty for himself and for Hanclore Trading Corporation (Rec., fols. 78-79). The Hanclore Trading Corporation asserted timely objection to the use of its books and papers as a basis for a criminal charge against it, but the books and papers were in fact so used against it.

In *United States v. Wong Quong Wong* (*supra*) the defendant had been ordered to be deported. He delivered his personal letters to one of the Government officers, and these were sought to be used with the object of establishing the commission of a crime by him. The use of the letters for that purpose was held unwarranted. The court decided that the use by the Government

officials of the letters after the defendant interposed objection to their use constituted "a seizure and compulsory production of a man's private papers and was equivalent to compelling the defendant to be a witness against himself, and was prohibited by the Fourth and Fifth Amendments to the Constitution."

In *United States v. Abrams* (230 Fed. Rep. 313), the defendants imported merchandise from a foreign country. Two government officers came to their place of business and asked for the delivery to them of certain of their papers and records. The defendants surrendered the papers to the government officials and the papers were later made the subject of an inquiry set on foot to prove that they had committed an offense against the laws of the United States. They then made application for a return of the papers and in support of his decision granting it, Judge Howe wrote (p. 315):

"Do the same reasons and rule apply to obtaining from a defendant papers which contain evidence of a crime as would apply in obtaining an oral admission of crime from him? The same reasons and rule should and do apply and the fact that the evidence thus obtained is written makes no difference. The defendant's constitutional rights are as much violated in one case as in the other. The taking of the papers from this defendant without his consent was also a seizure of them that was unreasonable and contrary to the spirit of the Fourth Amendment. *U. S. v. Wong Quong Wong*, 94 Fed. 832; *Weeks v. U. S.*, 232 U. S. 383.

In *Counselman v. Hitchcock* (*supra*), the Court said (pp. 562, 563, 564):

"It is impossible that the meaning of the constitutional provision can only be, that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases; but it is not limited to them. The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard."

"It is an ancient principle of the law of evidence that a witness shall not be compelled, in any proceeding, to make disclosures or to give testimony which will tend to criminate him or subject him to fines, penalties or forfeitures. (Cases cited.)

"The relations of Counselman to the subject of inquiry before the Grand Jury, as shown by the questions put to him, in connection with the provisions of the Interstate Commerce Act, entitled him to invoke the protection of the Constitution."

The books and papers which belonged to the Hanchaire Trading Corporation were taken and are withheld from it by force and were used and are sought to be further used for a purpose other than that for which they were brought in the first instance. Their use before the Grand Jury in connection with the indictment wherein the appellants are named as defendants, is a use against which the appellants are protesting, and would constitute a compulsory production of papers and effects before the Grand Jury. Hanchaire Trading Corporation would thus be forced to furnish evidence in a criminal proceeding against itself. Such use would also be an unlawful and unwarranted seizure and retention of the

books and papers of Hanclore Trading Corporation.

Ballman v. Fagin (200 U. S. 186).
Ex Parte Chapman (153 Fed. 371).
In re Kanter (117 Fed. 356).
In re Hess (134 Fed. 109).
Wilson v. United States (221 U. S. 361).
Foot v. Buchanan (113 Fed. 156).
People v. Forbes (143 N. Y. 219).
Lamsen v. Boyden (160 Ill. 613).
Emery's Case (107 Mass. 172).

The courts will not permit a violation of these constitutional rights either directly or indirectly.

Thus in *McKnight v. United States* (115 Fed. Rep. 972), the Circuit Court of Appeals for the Sixth Circuit, consisting of Judges Lurton, Day and Severence, held that it was a violation of the immunity guaranteed by the Fifth Amendment to the Federal Constitution to permit a demand to be made upon a defendant in a criminal case, in the presence of a jury, to produce a paper containing incriminating evidence against himself. Relying on *Boyd v. United States* (*supra*), the Court speaking by Judge Day, declared that that decision left no room for doubt that the compulsory production of an incriminating document by the accused when on trial for a crime, constituted a compulsion that he testify against himself within the meaning of the Constitution.

This decision was followed in *People v. Gibson* (218 N. Y. 70) and *People v. Minkowitz* (220 N. Y. 399).

In *People ex rel. Ferguson v. Reardon* (197 N. Y. 236), the constitutionality of a statute which purported to authorize the compulsory general examination of a person suspected to

have made transfers of stock, for the purpose of ascertaining whether if made, he had kept a record of them and paid taxes thereon as required by statute, was involved, and it was decided that such an act violated the provision of the State Constitution which declares that no person shall be compelled in any criminal case to be a witness against himself.

In the case at bar, the Government sent *four* customs officials with a subpoena for *all* the books, records and papers which the appellant Hanclore Trading Corporation had. The officers served a subpoena and thereafter resorted to deceit, evasion and high-handed "*raiding*" methods to accomplish their ends. There is no possible distinction between the invasion of the rights of the Hanclore Trading Corporation as they were urged in this proceeding, and the invasion condemned in the *Weeks* case (*supra*).

We reiterate that in that case (*Weeks* case) the Marshal, without the sanction of process, visited the defendant's room in his absence and took from the drawer certain letters tending to show guilt. This Court decided that the taking of these letters constituted an unreasonable search and seizure. In the case at bar we established more than a naked seizure. We established a carefully planned scheme conceived by Government officers to get hold somehow of books, papers and records. The scheme included an abuse of process. Under the guise of a subpoena for the books and papers of the Hanclore Trading Corporation, the customs officers took other books, records and papers. The books and papers called for by the subpoena were brought to the Grand Jury room. That body never asked for the books and papers from the person to

whom the subpoena was addressed. The customs officials (upon the pretext of holding them temporarily) took the books and papers called for by the subpoena while the appellants were kept busy looking for bail under warrants which were first served upon them when they came to the Federal Building—although these warrants must have been issued before their arrival at the Federal Building. The customs officer who got hold of the books and papers of the Hanclore Trading Corporation upon the pretext that he would hold them temporarily, *gave* all the books and papers to the United States Attorney. He in turn asked no questions about the books and papers which he had subpoenaed. He simply *took* them into the Grand Jury room where some were impounded. The customs officials and the assistant United States Attorney were all guilty of a gross invasion of the sanctity of the appellant's office and place of business and of the privacies of its affairs. Such taking of the books or papers was denounced by this Court in *Boyd v. United States* (116 U. S. 616), and held to constitute an unreasonable seizure.

Nor has the government overcome the presumption—"highly conclusive"—that the very taking of the books and papers, without a proper search warrant, constituted an unreasonable seizure. (*Flagg v. United States*, 233 Fed. 481.) In that case the defendant assailed the Government's right to the possession of his papers with the claim that they were taken from him without due process of law. The government contented itself with the statement that its officers had not seized the papers, but that the local police officials had seized them. Judge Coxe decided that the constitutional guarantee against unreason-

able search and seizure should not be determined by this dispute between state and federal officials. The court was, in that case, indifferent to the plea advanced for the government that the federal officials had nothing to do with the seizure. Judge Coxe wrote on this point, that (p. 483):

"A presumption, well nigh conclusive, that the United States, whose agents took the books and papers into custody, and who alone was interested in prosecuting the defendant, was the party who made or instigated the unlawful seizure through its agents and servants."

All the books and papers brought in compliance with the subpoena are now in the possession of the United States Attorney. He proposes to use them upon the trial of the indictment, and the return of all these books and papers should have been ordered.

The effect of the Fourth Amendment to the Federal Constitution is stated by Mr. Justice Day in *Weeks v. United States* (232 U. S. 383, 392) to be to

"Forever secure the people, their persons, houses, papers and books against all unreasonable searches and seizures under the guise of law." (Italics ours.)

We dread to think of what would follow, if our courts should in any case deny to its citizens security against the arbitrary "*taking*" and "*use*" of books and papers which are brought into court in obedience to a subpoena. The security of the people, and of their *papers and effects* against all unreasonable searches and seizures would then be hopelessly lost. Such a determina-

tion would in effect work as a repeal of the "sacred" constitutional guarantee.

We are confident that this court will follow the path outlined by Judge Bradley, in *Boyd v. United States* (116 U. S. 630) and that it will fully adopt Lord Camden's words as they were recorded in *Entick v. Carrington* (19 Howell St. Tr. 1029):

"That papers are the owners' goods and chattels. *They are his dearest property and are so far from enduring a seizure that they will hardly bear inspection.*" (Italics ours.)

Will an owner's papers continue to be "*his dearest property*," if a government official will be permitted to "*take and use*" books and papers which are brought into court by the mandate of a subpoena against the party bringing the books unless at least an opportunity be afforded to assert the constitutional immunity.

We have full confidence in our institutions. We know that the security of our citizens in their papers and effects will be fully safeguarded by this court.

We urge that we are not dealing with technical or abstract principles or theories of law, but with a question which goes to the very foundation of human rights which had their origin in Magna Charta and their re-affirmation in the Constitution of the United States. Judge Cox quotes upon this point (*Flagg v. United States, supra*), the eloquent language of Chatham in his address upon the excise bill in England some generations ago (p. 482):

"The poorest man may in his cottage bid defiance to all the forces of the crown; it may be frail, its roof may shake, the wind

may blow through it; the storm may enter, the rain may enter; but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."

And Judge Coxe concludes in *Flagg v. United States* (*supra*) at page 482:

"What becomes of this defendant, important as it is, sinks into insignificance when compared with the right of the people of the United States to be protected from unlawful search."

And Judge McKenna, for this Court, wrote (*Wilson v. United States*, 221 U. S., p. 393):

"A people may grow careless and overlook at what cost and through what travail they acquire even the least of their liberties. The process of deterioration is simple. It may be conceived to be advancement, and that intelligent self-government can be trusted to adapt itself to occasion, not needing the fetters of a predetermined rule. It may come to be considered that a constitution is the cradle of infancy, that a nation grown up may boldly advance in confident security against the abuses of power, and that passion will not sway more than reason. But what of the end when the lessons of history are ignored, when the barriers erected by wisdom gathered from experience are weakened or destroyed? And weakened or destroyed they may be when interest and desire feel their restraint. What, then, of the end? Will history repeat itself? And this is not a cry of alarm. '*Obsta principiis*' was the warning of Mr. Justice Bradley in *Boyd v. United States* against the attempt of the government to break down the constitutional privilege of the citizen by attempting to exact from him evidence of fraud against the customs laws. I repeat the warning."

IV.

The Hanclore Trading Corporation did not waive its right to prevent the use of its books and papers in a criminal investigation instituted against it.

The conclusion that Hanclore Trading Corporation waived the immunity from unreasonable search and seizure, originated with the court. District Judge Knox wrote that even though the books and papers of the Hanclore Trading Corporation were unlawfully and unreasonably seized (Rec., fol. 276), that by the "*course of inaction*" the Hanclore Trading Corporation had waived any rights which it may have had to a return of the papers (Rec., fol. 277).

The reason for the "inaction" is fully explained. Mr. Schratter swore that (Rec., fols. 78-79):

"Prior to October 14, 1921—it was on a Friday—I had arranged passage for Europe and I obtained leave of the court to leave for Europe the following day, October 15, 1921. I remained abroad in connection with business matters until June 9, 1922. While in Europe I learned that I had been indicted jointly with the Hanclore Trading Corporation upon the charge that I and the Hanclore Trading Corporation violated the laws of the United States relating to introducing into the commerce of the United States goods contrary to the provisions of law. I pleaded not guilty to the charges contained in the indictment on June 12, 1922 (three days after Schratter's return) and also entered a similar plea, on behalf of the Hanclore Trading Corporation on June 19, 1922."

District Judge Knox was fully conversant with the fact that Schratter (the main factor in the

Hanclaire Trading Corporation and practically in control of its affairs), was absent from the United States by his leave and with his consent. Judge Knox recalled the fact that immediately following Schratte's arrest he appeared before him and requested permission to go to Europe (Rec., fol. 271). Judge Knox granted the permission and concluded that his "inaction" while in Europe, constituted a waiver of the holy and precious protection afforded by the United States Constitution.

The District Court predicated its conclusion that the Hanclaire Trading Corporation waived its right to assert the constitutional immunity upon mere lapse of time—the omission to move promptly, yet this Court, in one of the latest cases dealing with the question of unreasonable searches and seizures—*Gouled v. United States* (*supra*)—decided that the right for a surrender and return of papers may even be asserted at the trial of the indictment. The law is that (*Ruling Case Law*, Vol. 27, p. 909):

"A waiver may be express or implied, but in the absence of an agreement, a waiver will not be presumed or implied contrary to the intention of the party whose rights would be injuriously affected thereby, unless by his conduct the opposite party has been misled to his prejudice into the honest belief that such waiver was intended or consented to. To make out a case of waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such a purpose or acts amounting to an estoppel on his part."

In *Ruling Case Law* (Vol. 6, p. 93) the compilers state the further rule of waiver thus:

“With certain exceptions, an individual may waive constitutional provisions intended for his benefit, especially when no question of public policy or public morals is involved. *Such waiver may be in writing or by conduct amounting to an estoppel.*” (Italics ours.)

We do not anticipate that it will even be contended by the government that Schratter's failure to apply to the court for a return of the books and papers which were unreasonably seized during the time when he was absent from the jurisdiction of the court, amounted to an *estoppel* and so constituted a waiver.

In *Shepard v. Barron* (194 U. S. 553), this Court decided that (p. 568):

“Provisions of a constitutional nature intended for the protection of the property owner, may be waived by him not only by an instrument in writing upon a good consideration signed by him, but also by a course of conduct which shows an intention to waive such provision and where it would be unjust to others to permit it to be set up. Certainly, where action of this nature has been induced at the request of and upon the instigation of an individual, he ought not to be thereafter permitted upon general principles of justice and equity to claim that the action which he has himself instigated and asked for and which had been taken upon the faith of his request, should be held invalid and the expense thereof which he ought to pay transferred to a third person.” * * *

In the case at bar, the District Judge based his conclusion that the Hanclore Trading Corporation had waived every right of constitutional protection by the failure to ask for a return of

the papers for a period of eight months. The government spent seven months (from October, 1921, when the Hancloire Trading Corporation's books, etc., were seized, to May, 1922, when the indictment was returned) in the investigation of the books, records and papers. Earlier application was not made because Schratter who alone was directing the affairs of Hancloire Trading Corporation, was *with the court's sanction*, absent in Europe. There was no estoppel established. The government has not changed its position. The government has not acted upon any representation or act which can be charged to Schratter or to Hancloire Trading Corporation.

The government never had and never acquired the right to the Hancloire Trading Corporation's books and papers. These books and papers were unlawfully taken from the custody and possession of the Hancloire Trading Corporation. The latter was protected against such unlawful and unreasonable seizure of its books and papers by constitutional mandate. The constitutional prerogative was asserted as soon as Schratter, the man in charge of the affairs of Hancloire Trading Corporation, returned to the United States. The same prerogative could have been delayed until the trial of the indictment and yet have been timely (*Gould v. United States, supra*). There was no waiver either in fact or in law.

V.

It was within the power of the District Court as well as its duty to grant the relief for which Hanclaire Trading Corporation prayed.

This was squarely decided in *Weeks v. United States* (*supra*), where in addition to the language already quoted from the opinion of Mr. Justice Day, he said (p. 398):

“The right of the court to deal with papers and documents in the possession of the District Attorney and other officers of the court and subject to its authority was recognized in *Wise v. Henkel* (220 U. S. 556). That papers wrongfully seized should be turned over to the accused has been frequently recognized in the early as well as later decisions of the courts. Bishop on Criminal Procedure, Sec. 210, *Rex v. Barnett*, 3 C. & P. 600; *Rex v. Hensey*, 7 C. & P. 447; *United States v. Mills*, 185 Fed. Rep. 318; *United States v. Mellic*, 194 Fed. Rep. 894, 898.”

In *United States v. Mills* (*supra*), cited in the opinion of Mr. Justice Day in *Weeks v. United States* (*supra*), after the United States Marshal had, under a warrant, seized the books and papers of the defendants, a petition was filed in the United States Circuit Court for the Southern District of New York for instructions to the Marshal and District Attorney to return such books and papers to the defendants, and the application was granted.

In *United States v. Mellic* (194 Fed. Rep., 894), likewise cited with approval in *Weeks v. United States* (*supra*), the Capital Investment Company, which was not indicted and whose

books had been seized by special agents of the United States, presented an application to the Court for the return to it of the property thus seized. The application was granted. In the course of his opinion Judge Sanborn said (p. 898):

"It is further objected on the part of the Government that the Capital Investment Company has no standing in this case, no right to petition the Court for the restoration of its property so unlawfully seized. As to this point, it is enough to say that the property was seized under the claim of judicial process and thus brought under the control of the Court. It appears to be placed beyond the reach of a writ of replevin, or any other effective independent or plenary remedy. The courts are always open to petitions of this kind and the jurisdiction has been often exercised without question."

Wise v. Mills (220 U. S. 549) and *Wise v. Henkel* (220 U. S. 556) involved similar applications.

See also

In re Birdsong (39 Fed. 599).

United States v. Burr (25 Fed. Cas. 41, at p. 48).

Sec. 725, U. S. Rev. Stat.

VI.

The final order of the District Court should be reversed with directions that the prayer of the petition of Hanclaire Trading Corporation be granted.

W. M. K. OLCOTT,
ABR. A. SILBERBERG,
Counsel for Appellants.

FILED
APR 16 1927

U. S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Nos. 706 AND 707

In the Supreme Court of the United States

OCTOBER TERM, 1927.

ESSEGE COMPANY OF CHINA AND DAVID SCHRATTER

v.
UNITED STATES OF AMERICA

HANCLAIRE TRADING CORPORATION AND DAVID
SCHRATTER

v.
UNITED STATES OF AMERICA

APPEAL FROM AND IN ERROR TO THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTHERN DISTRICT
OF NEW YORK

BRIEF FOR THE UNITED STATES

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1926

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

ESSGEE COMPANY OF CHINA AND DAVID Schratter v. UNITED STATES OF AMERICA.	} No. 706.
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HANCLAIRE TRADING CORPORATION AND David Schratter v. UNITED STATES OF AMERICA.	} No. 707.
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*APPEAL FROM AND IN ERROR TO THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTHERN DISTRICT OF
NEW YORK.*

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASES.

The Essgee Company of China and the Hanclore Trading Corporation filed petitions in the District Court of the United States for the Southern District of New York, asking for the return of certain books and papers then in the possession of the United States attorney for the Southern District of New York. (R., p. 13-38.) David Schratter, an officer of both corporations, joined in both petitions.

On September 12, 1922, the district court dismissed the petitions (R., p. 2) and the cases are brought here by appeal and writ of error (R., pp. 10-12).

In the briefs filed on behalf of the appellants the facts upon which the said petitions were based are set forth at length, but, unfortunately, with some bias, and it is therefore deemed necessary to restate the facts herein, as disclosed by the record and particularly by the opinion of the court below.

On October 14, 1921, Edward R. Norwood, a customs agent, deputized by the marshal for that purpose, served two subpoenas duces tecum (R., pp. 52-58) directed to the two corporations upon David Schratter, an officer of both corporations, at the office where the said concerns carried on business. The grand jury was then investigating an alleged violation of the customs laws, act of October 3, 1913, paragraph G, section 3 (38 Stat. 183) (R., p. 55).

A joint indictment charging a violation of the above statute was returned against both corporations and David Schratter during the May, 1922, term of the district court. (R., pp. 15, 26, 91.) Kramer was not indicted. (R., p. 32.)

At the time of effecting service of the subpoenas Norwood was accompanied by Acting Deputy Collector of Customs Williams and Customs Agents Dow and Neustadt (R., pp. 43, 52, 54). The story from this point on may be told in the words of District Judge Knox (R., p. 90):

In response to the subpoenas, or at least to one of them, certain papers were gathered

together by one Kramer, vice president of the Hanclore Trading Company, in the presence of Schratter, and were taken by Kramer, accompanied by Schratter and two Government officials, to the anteroom of the grand jury, which was then in session in the Federal courthouse, in this district.

Arriving there, neither Kramer or Schratter was invited before the grand jury; the papers were deposited upon a table in the anteroom; or, at the request of one of the aforesaid officials, were left in his custody. At about this time, the assistant United States attorney, in charge of this prosecution, emerged from the grand jury room, and taking the papers into his possession carried them before the grand jury, where some of them were ordered impounded.

Meanwhile, Kramer and Schratter were directed to go to another part of the Federal building, and, having done so, were informed that warrants had been issued for their arrest for alleged offenses against the customs laws. The two men were subsequently arraigned before United States Commissioner Hitchcock, where they waived examination and were admitted to bail.

On the following day (October 15) David Schratter, over the objection of the United States attorney, obtained leave of court to go to Europe, where he remained until June 9, 1922 (R., p. 91). During the time Schratter was abroad Kramer testified before the grand jury (R., pp. 32, 40, 83), and at that time voluntarily gave to the United States attorney certain papers which are described by him (R., p. 83) as

"certificates for shares of capital stock of Essgee Company of China, unpaid drafts which belonged to deponent, and also papers which corroborated deponent's contention that deponent was a creditor of David Schratter and Hanclore Trading Corporation."

The records and briefs filed by the appellants deal at great length with their right to the return of certain other papers the property of the two corporations (R., pp. 46-49) which were taken from their office on October 14, 1921, by Messrs. Williams and Neustadt, shortly after the departure of Schratter and Kramer for the Federal building. The district court found that such papers were taken with the consent of Schratter and Kramer (R., pp. 93, 94), stating that its decision would be reviewed at the trial of the criminal action. The Government contends that these papers were returned at the request of Kramer on October 19, 1921 (R., p. 72). This would seem to be admitted by the appellants. At page 87 of the record Schratter says, under oath:

The papers which the Government now has are, therefore, the papers which deponent and Mr. Kramer produced pursuant to the command of the subpoena duly served.

This admission is again made on page 16, of the brief filed on behalf of Hanclore Trading Corporation, where it is stated:

We will limit our demands to the books, invoices, and papers which the United States attorney took, because as to those papers, invoices, and books there is no dispute of fact.

As to the papers removed by the customs agents after the departure of Schratter and Kramer (R., pp. 46-49), the order of the district court is interlocutory (R., pp. 3, 93-95).

The record is barren of an affidavit from Customs Agent Neustadt, for the reason that at the time these proceedings were instituted he was abroad in Germany as a Treasury attaché. (R., p. 49.)

In the records the term "private invoices" is used to describe some of the papers produced in obedience to the subpœnas. It is not intended by this phrase to convey the idea that there was any title in the individuals to those invoices or that they pertained to their personal affairs. It is simply used to describe invoices which were transmitted by the shipper abroad to the corporations in this country privately, i. e., they were not made part of the entries filed at the New York Customs house at the time the goods mentioned therein were brought into the United States. The prices of the merchandise listed on the "private invoices" were higher than those filed with the entries. (R., p. 45.)

QUESTIONS INVOLVED.

The assignments of error herein (R., pp. 4-6) are predicated upon violations of the fourth and fifth amendments, in that both the corporations and Schratter have been subject to an unreasonable search and seizure and have been and will be compelled in a criminal case to be witnesses against themselves.

ARGUMENT.

I.

The order of the district court denying the application for the return of the books, etc., is in its nature interlocutory and not reviewable.

Alexander v. United States, 201 U. S. 117.

Coastwise Lumber & Supply Co. v. United States, 259 Fed. 847.

United States v. Maresca, 266 Fed. 713.

United States v. Marquette, 270 Fed. 214.

In re Weinstein, 271 Fed. 5.

Murray v. United States, 273 Fed. 522.

The cases at bar are readily distinguishable from *Burdeau v. McDowell*, 256 U. S. 465, and *Perlman v. United States*, 247 U. S. 7, in that in those cases no criminal actions were pending. The proceedings were entirely independent and the orders, therefore, were essentially final. But here, while appellants have entitled their motions for the recapture of the books and papers as separate proceedings, yet there are criminal actions pending and their motions upon examination lose whatever independent character they may have had and are seen to be but steps in the criminal actions.

There is a lack of jurisdiction disclosed by the record, and this court will not review the orders of the district court.

II.

No right of David Schratter is involved in this matter.

Where the books and papers of a corporation are produced in a judicial proceeding at the instance of the Government, the officers of such corporation

have no rights either against unreasonable search and seizure or under the evidence clause in the fifth amendment.

Grant v. United States, 227 U. S. 74.

Wheeler v. United States, 226 U. S. 478.

Hale v. Henkel, 201 U. S. 43.

Wilson v. United States, 221 U. S. 361.

In the cases at bar the papers produced in response to the subpoenas included the personal tax assessment for Morris Schratter and David Schratter by the city of New York for the year 1922. (R., p. 80.) It was not called for by the Government, is of no moment, and is entirely irrelevant to the prosecution. The Government stands ready and willing to return it. No other papers belonging to David Schratter are in the possession of the Government.

An answer to the statement that Schratter's books, records, and papers were seized, which if predicated upon the presence of the tax assessment, is to be found in the opinion of this court in *Johnson v. United States*, 228 U. S. 457, wherein it is held that while an individual is privileged from producing his papers, books, and records, nevertheless he is not privileged from their production by a third party. This is precisely the case here. The assessment was produced by the corporation wholly inadvertently. Had it been noticed on October 19, 1921, when Williams returned certain papers to the appellants, it would likewise have been returned.

III.

The production of the corporate books and papers by means of the subpœnas duces tecum did not violate the fourth amendment, either as to the corporation or its officers.

Grant v. United States, supra.

Wheeler v. United States, supra.

Dreier v. United States, 221 U. S. 394.

Wilson v. United States, supra.

Hale v. Henkel, supra.

The scope of the subpœnas in these cases was reasonable. In the leading case of *Hale v. Henkel*, supra, the court held that the subpœna was far too sweeping in its terms to be reasonable. The contracts sought to be subpœnaed in that case were not limited to those made with a particular corporation, nor were the other writings and documents in any wise limited. It required the production of all understandings, contracts, or correspondence between the MacAndrews & Forbes Company, and no less than six different companies, as well as reports made and accounts rendered by such companies from the date of the organization of the MacAndrews & Forbes Company, and all letters received by the company since its organization from more than a dozen different companies, situated in seven different States.

The subpœnas in the cases at bar, however, have none of the vices denounced in the *Henkel* case. They were specific in describing the books to be produced. The contracts and other writings are limited to the corporations named in the subpœnas and in each

instance the time is specified covering the particular books and records.

The subpoenas were drawn so that the investigation by the grand jury might cover the various ways by which an offense under the statute (R., p. 55) might be committed. That statute reads as follows:

G. That if any consignor, seller, owner, importer, consignee, agent, or other person or persons, shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall make any false statement in the declarations provided for in paragraph F without reasonable cause to believe the truth of such statement, or shall aid or procure the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such person or persons shall upon conviction be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time

not exceeding two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

In two instances the subpœnas call for records from January, 1915, to October, 1921. (R., pp. 56, 57, 58.) The statute of limitations applicable to the offense under investigation by the grand jury is five years. Revised Statutes, section 1046. The requirement was not unreasonable.

Heike v. United States, 227 U. S. 131.

The subpœnas being reasonable in every particular, there was no unreasonable search and seizure.

Wheeler v. United States, supra, at page 489.

Wilson v. United States, supra, at page 376.

Consolidated Rendering Co. v. Vermont, 207 U. S. 541, 554.

United States v. Watson, 266 Fed. 736.

Hale v. Henkel, supra.

Norcross v. United States, 209 Fed. 13.

In re American Sugar Refining Co., 178 Fed. 109.

Santa Fe Pac. R. R. Co. v. Davidson, 149 Fed. 603.

United States v. American Tobacco Co., 146 Fed. 557.

IV.

The corporations are not privileged against the use of their books in a criminal prosecution.

The decisions of this court are conclusive that a corporation, when required to produce its books at the instance of the Government, may not plead an immunity against self-incrimination. Nor may an officer of a corporation refuse to produce its books on the ground that to do so would incriminate him. The books and papers of Essgee Company of China and Hanchaire Trading Corporation were not privileged from production on the ground that they would incriminate the corporations or the officers thereof.

Hale v. Henkel, supra.

Wilson v. United States, supra.

V.

If appellants ever had a right to object to the production of the books, it has been waived.

The evidence is in conflict as to just how and when the assistant United States attorney took physical possession of the papers. (R., pp. 30, 77, 78.) Judge Knox found that (R., p. 90) —

the papers were deposited upon a table in the anteroom, or, at the request of one of the aforesaid officials (Customs Agents Norwood or Dow) were left in his custody. At about this time the assistant United States attorney, in charge of this prosecution, emerged from the grand jury room, and taking the papers

into his possession, carried them before the grand jury, where some of them were ordered impounded.

In re District Attorney of the United States, Fed. Cas. 3925; 7 Fed. Cas. 745, the court in defining the duties of the district attorney with respect to the grand jury, stated that it was part of his duty to lay before that body all the evidence officially in his hands.

In *Wertheim v. Continental Ry. & Trust Co.*, 15 Fed. 716, 727, cited with approval in *Wilson v. United States*, supra, it is stated that the witness served with a subpœna *duces tecum* may be required to make a return to the writ before the case is opened.

So in the case at bar, the most that can be said is that the district attorney emerged from the grand jury room to the anteroom where Schratter and Kramer had just arrived with the records subpœnaed and carried them before the grand jury where some of them were ordered impounded. To argue that such action was an illegal seizure is no argument at all, because it assumes the very duty of the district attorney.

On page 21 of the Hanclore brief it is stated that *Hale v. Henkel*, supra, is authority for the doctrine that one served with a subpœna has an inherent right to challenge its sufficiency and have the judgment of the court upon his challenge before the subpœna is finally enforced. We are unable to draw any such inference from the Henkel case, and

appellant's contention is not substantiated by the accepted practice. The universal practice in cases where it is felt a subpoena is defective is to move to quash or to refuse the command and await a trial of the issue in the resulting proceeding for contempt. In *Wilson v. United States*, supra, the court holds at page 372 that where papers are produced in response to a subpoena *duces tecum* directed to a corporation it is not necessary to have the person producing the documents sworn as a witness.

In this connection it is to be particularly noted that the subpoenas were directed to the corporations. Schratter was never enticed, solicited, requested, or subpoenaed to come to the Federal building. (R., pp. 55, 75, 90.) The subpoenas were answered by the responsible officer of the corporations, but it is submitted that answer to the subpoenas could as well have been made by dispatching the books and papers requested by means of a clerk or other employee of the corporations.

If Schratter upon presenting himself at the Federal building in response to the subpoenas had then been called before the grand jury, he could have asserted his individual constitutional rights. But he was not thus called, and therefore his constitutional rights were never called into question and it must follow that he never waived them.

The Government was implored to permit Schratter and Kramer to testify before the grand jury. (Exhibit A, R., pp. 40, 42.) Kramer was accorded this

privilege, and "in the course of his testimony voluntarily produced certain papers and documents which, the record indicates, had an important bearing upon his prosecution." (Opinion of the district court, R., p. 92.)

It thus appears that the corporations, in the person of their attorney, who was an officer of one of them, were permitted not only to challenge the subpoenas but to testify before the grand jury, and that no objection to the production or use of the papers was made. The right to challenge the subpoenas was accorded the appellants, and by their failure to assert it they must be held to have waived their privilege.

The appellants, by their long acquiescence in the use of the papers, and now that an indictment is pending in this case, must be held to have waived any right to the return of the papers here demanded.

In *Dreier v. United States*, 221 U. S. 394, *supra*, the Government contended that there had been a waiver, but the court found it unnecessary to decide the question. The situation is analogous to the case where a witness testifies in part to a transaction with which he was criminally concerned. Having done this, he has waived his privilege and must make a full disclosure.

Brown v. Walker, 161 U. S. 591, 597.

As to the time of filing a petition for the return of papers alleged to have been seized illegally, the cases at bar should be distinguished from *Gould v. United States*, 255 U. S. 298. It is there held that if a de-

fendant, *when first informed* that the Government has in its possession a paper illegally seized from him, moves forthwith for its return, such a motion does not come too late when first made at the trial of his case. In the present cases the appellants knew the Government was using the papers and courted such use. (R., p. 42.)

VI.

The Government is not under obligations to return the papers produced voluntarily.

The affidavits of Assistant United States Attorney McGurk and Exhibit A (R., pp. 39-42) disclose that during the grand jury's investigation Kramer and one Louis S. Posner, attorney for the corporations, repeatedly requested permission for Kramer to appear before the grand jury. Kramer did appear before that body in May, 1922, and voluntarily produced documents, the return of which is now requested. This situation is clearly controlled by the decision in *Perlman v. United States*, 247 U. S. 7, where the rights of the Government were not as strong as they are here, for the reason that there the exhibits had been produced in a separate proceeding of a civil character. In *United States v. Hart*, 216 Fed. 374, the facts were one with the case at bar, and there the Government was sustained in its refusal to return the papers.

It is therefore respectfully submitted that the appeal and the writ of error should be dismissed, or the judgment of the district court affirmed.

JAMES M. BECK,

Solicitor General.

JOHN W. H. CRIM,

Assistant Attorney General.

CLIFFORD H. BYRNES,

Special Assistant to the Attorney General.

FRANCIS A. MCGURK,

Assistant United States Attorney,

Southern District of New York.

APRIL, 1923.





FILED

MAR 24 1923

WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922—No. 706.

ESSGEE COMPANY OF CHINA and
DAVID SCHRATTER,
Plaintiffs-in-Error and Appellants,

against

UNITED STATES OF AMERICA,
Defendant-in-Error and Appeller.

Appeal From and in Error to the District Court of the
United States for the Southern District of New York.

Brief for Plaintiffs-in-Error and Appellants

W. M. K. OLCOTT,
ABR. A. SILBERBERG,
Counsel for Appellants.



Supreme Court of the United States

OCTOBER TERM 1922.

ESSGEE COMPANY OF CHINA and
DAVID SCHRATTER,
Plaintiffs-in-Error
and Appellants,

AGAINST

UNITED STATES OF AMERICA,
Defendant-in-Error
and Appellee.

No. 706

Appeal from and in error to the District Court
of the United States, for the Southern Dis-
trict of New York.

BRIEF FOR PLAINTIFFS-IN-ERROR AND APPELLANTS.

Statement.

The Essgee Company of China (a New York corporation) and David Schratter, the plaintiffs-in-error and appellants appeal from a final order and decree by which their application to compel the United States Attorney in and for the Southern District of New York, to return to them their books, records, and papers, etc., was denied (Rec., fols. 6-8).

The Essgee Company of China had its place of business in the City of New York, and dealt in straw goods and other merchandise (Rec., fol. 51). On October 14, 1921, *four* officers of the United States Customs Service, entered the corporation's place of business and asked for a Mr. Kramer and for Mr. David Schratter, one of the appellants (Rec., fol. 53).

One of the four officers, served Mr. Kramer with a subpoena *duces tecum*, entitled in a proceeding against Essgee Company of China, for the production (forthwith) before the Grand Jury of its books of account, its minute book, its invoices, its records and papers relating to all its dealings for a period of six years (Rec., fols. 164-172).

In keeping with the mandate of the subpoena, Kramer collected some of the books of account, the minute book, invoices and papers. Accompanied by two of the Government officials and by Schratter, Kramer proceeded with the books and papers to the Federal Building in the City of New York, where the Grand Jury was in session (Rec., fol. 54).

On arrival at the Federal Building, Kramer was escorted to a room which adjoins the room where the Grand Jurors met, and was told to leave the books, invoices and papers which he had with him with one of the customs officials, while he conferred with the Assistant United States Attorney (Rec., fol. 55).

Kramer so left the books, invoices and papers in the temporary custody of the customs official, and instead of a conference with the United States Attorney, was directed to present himself for arraignment under a warrant which had *theretofore* been issued against him (Rec., fol. 56). Kramer returned and demanded all

the books, invoices and papers which he had left in the custody of the customs official and was told that the papers would not be surrendered or returned to him or the Essgee Company of China (Rec., fol. 57).

All the books, invoices and papers produced pursuant to the mandate of the subpoena were seized by the Government officials before Kramer or any other officer of the Essgee Company of China was asked to produce them before the Grand Jury, and before Kramer or any other person was called as a witness pursuant to the subpoena which had been served (Rec., fol. 59).

The books, records, invoices and papers which were taken from Kramer, were used before the Grand Jury in the consideration of the charges which are included in the indictment which was returned against Essgee Company of China (Rec., fol. 58), although it never consented to such use (Rec., fols. 58-59). The United States Attorney, proposes to use the books, records and papers, so seized and taken upon the trial of the indictment (Rec., fol. 66).

The United States Attorney admitted that he had in his possession, a number of the books, records and papers which were produced by the Essgee Company of China, pursuant to the subpoena *duces tecum* which had been served upon one of its officers (Rec., fols. 235-239) and maintained that those books, etc., and the books, papers and records produced pursuant to another subpoena directed against Hanchaire Trading Corporation, comprised all the papers, books and records which he used and had (Rec., fol. 239).

The appellants contended in the District Court that to permit the United States Attorney to keep and to use the books, invoices and papers so taken from them without warrant in law,

would constitute an infraction of the rights which were secured to them by the Fourth and Fifth Amendments to the Constitution of the United States. That the taking and seizure of the books, invoices and papers constituted an unreasonable search and seizure of its books, invoices and papers. Also that by the taking of and the use of the same books, invoices and papers, the appellants were and will be compelled in a criminal cause to be witnesses against themselves.

District Judge Knox heard the application which the appellants made to compel the United States Attorney to return the books, records and papers so seized and taken from them, and considered that application together with a similar application which was made by Hanclore Trading Corporation which had offices in common with the Essgee Company of China.

The facts and circumstances which relate to the seizure of the books and papers of the Essgee Company of China are the same as the facts and circumstances which are fully stated in the appeal which is being prosecuted by the Hanclore Trading Corporation, and is No. 707 on the October Term 1922 Docket of this Court.

The assignments of error and the points argued in the Hanclore Trading Corporation appeal (No. 707 October 1922 Term) apply with equal force to the facts and circumstances which are included in the record in this cause.

The four customs officials when they came to the place of business of the Essgee Company of China, found that that company and the Hanclore Trading Corporation occupied the same offices. Separate subpoenas *duces tecum* were served. One subpoena was directed to the Hanclore Trading Corporation, and the other was

directed to the Essgee Company of China, the appellant in this case.

Both subpoenas were served upon the same person, a Mr. Kramer. He gathered the books, papers and records of both the Hanclore Trading Company and the Essgee Company of China, and took all of them to the Federal Building. There all the books, records and papers were seized at the same time and under the same circumstances.

There was no separation of facts or details in the seizure or the use of the books, records and papers of the Essgee Company of China or of the Hanclore Trading Corporation. We will for that reason not re-state the argument which we made in the *Hanclore Trading Corporation* case (October Term, No. 707) in support of the claims that the taking and the retention of the books, papers and records were unlawful and in violation of the protection secured to the Essgee Company of China by the Fourth and Fifth Amendments to the Constitution of the United States.

Every word which was included in the brief in the Hanclore Trading Corporation appeal (October 1922 Term No. 707) applies with equal force to the facts stated and set forth in the record which contains the proceedings instituted by and for Essgee Company of China (the case at bar). The difference is limited to the names of the two corporations. Each of the corporations (Hanclore Trading Corporation and Essgee Company of China) was subpoenaed. A number of each company's records and papers were brought to the Federal Building pursuant to the mandate contained in the subpoena. The persons subpoenaed were not summoned as witnesses. The parties subpoenaed were not called

upon to produce the books, records or papers. The parties subpoenaed were not afforded an opportunity to challenge the subpoena or to state or set forth any reason why the books should not be produced.

The books, records and papers of Essgee Company of China like the books, papers and records of the Hancloire Trading Corporation, were taken by one of the customs officials upon the statement that he would hold them while Kramer conferred with the Assistant United States Attorney. Instead of the conference, Kramer was directed to present himself for arraignment under a warrant which had *theretofore* been issued against him. The Assistant United States Attorney appeared upon the scene. The customs officials told him that the books, records and papers of each of the corporations were in the room. He, the Assistant United States Attorney asked no questions, and took all the books, records and papers and used them as a basis for the indictment which was returned against the Essgee Company of China.

We reiterate all that we have said in the brief submitted in the Hancloire Trading Corporation appeal (October Term 1922, No. 707) and conclude that for the reasons assigned in that brief, the Essgee Company of China is entitled to a surrender and return of the books, papers and records seized from it without warrant in law.

Respectfully submitted,

W. M. K. OLCOTT,
ABR. A. SILBERBERG,
Counsel for Appellants.

Order affirmed.

ESSGEE COMPANY OF CHINA ET AL. *v.* UNITED STATES.

HANCLAIRE TRADING CORPORATION ET AL. *v.* UNITED STATES.

ERROR TO AND APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 706 and 707. Submitted April 25, 1923.—Decided May 7, 1923.

1. Review of orders of the District Court in special proceedings in which no jury can intervene is by appeal, and not by writ of error. P. 152.
2. In view of provisions of the Act of September 6, 1916, rendering mistakes in proceeding by writ of error instead of appeal, or *vice versa*, immaterial from the standpoint of jurisdiction, the practice of adopting both methods through abundant caution is discouraged. *Id.*
3. A corporation is not protected by the Fourth and Fifth Amendments from producing its books and records before a federal grand jury engaged in investigating its conduct in relation to the federal criminal laws. P. 155.

4. The lawful effect of a subpoena *duces tecum* addressed to a corporation is not disturbed by failure to put its officers who produce the papers on the stand. P. 157.
 5. A claim of irregularity in not calling such officers before the grand jury, *held*, to have been waived by their conduct. *Id.*
 6. An officer of a corporation having custody of its books and papers can not object to producing them upon the ground that they may disclose his own guilt. P. 158.
- Affirmed.

REVIEW of orders of the District Court denying petitions for the return of books and papers produced under a subpoena *duces tecum*.

Mr. W. M. K. Olcott and Mr. A. A. Silberberg for plaintiffs in error and appellants.

Mr. Solicitor General Beck, Mr. Assistant Attorney General Crim, Mr. Clifford H. Byrnes, Special Assistant to the Attorney General, and Mr. Francis A. McGurk for the United States.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

These are appeals and writs of error to review the action of the District Court in denying petitions of the two companies, the Essgee Company of China and the Hanclore Trading Corporation, praying that the books and papers produced by an officer of the two companies, in response to a *duces tecum* issued to them by order of the Federal Grand Jury, be returned to the petitioners, on the ground that the process issued and the detention of the books by the Government were and are in violation of their rights under the Fourth and Fifth Amendments to the Federal Constitution.

Both appeals and writs of error were allowed in these cases. This was unnecessary. The review sought is of an order of the District Court in a special proceeding in

which no jury can intervene. It likens itself in its appellate character to a review of cases in equity or in admiralty or of an order upon a writ of *habeas corpus* in which issues of facts are triable to the court, and in which the review may properly involve a reëxamination by the reviewing court of the whole record and of the findings of the court upon both the law and the evidence therein. Since the passage of the Act of September 6, 1916, entitled "An Act To amend the Judicial Code" (39 Stat. 726, c. 448, § 4), which provides that no court having power to review a judgment or decree passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal because a writ should have been sued out, but that when such mistake or error occurs, it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed, the distinction is not important from the standpoint of the jurisdiction of this Court. In the interest, however, of orderly procedure, economy in time of both courts, and in the making up and printing of the record, counsel should make every effort to select the proper procedure in review and not duplicate methods out of an abundant caution which the Act of 1916 makes unnecessary.

The Hanchaire Trading Corporation and the Essgee Company of China were organized under the laws of New York and were doing an importing business in New York City. Schratter was an officer in both companies and Kramer was an officer of one and attorney for both. The Federal Grand Jury in the Southern District of New York was investigating charges of frauds in importations by these two companies whose interests and transactions were intermingled. On October 14, 1921, a subpoena *duces tecum* was served upon each of the corporations by personal service upon Schratter as a chief officer thereof. Schratter then directed Kramer to gather together the

books and papers called for and produce them at the Federal Court House. The subpoena was served by the U. S. Marshal for the District. He was accompanied by three other Government officials, who, it was charged, without authority examined and took away to the Court House other books and papers not included in the list set forth in the *duces tecum*. This incident was made an issue in the affidavits; but it is evident from reading the record and the admission of counsel that we are not concerned with any such records and papers, but only with those which were produced by Kramer for the two companies in response to the *duces tecum*. Schratter in his affidavit and petition claims that under the subpoena some papers belonging to him individually were taken, but an examination of the list of records and papers produced, shows that the only personal paper produced by Kramer was the personal tax return of Schratter, which he does not assert was in any way relevant to the charges, or in any degree incriminating as to him. Kramer and Schratter brought the records and papers called for by the subpoena to a room in the Court House and deposited them on a table where the District Attorney found them and took charge of them. Neither Schratter nor Kramer was then called before the Grand Jury, but they were both at once arrested upon warrants for violation of the importing laws. They testified that they did not see the District Attorney when he took the records and papers and that Kramer demanded a return of them and protested against their detention. Evidence to the contrary is offered by the Government witnesses, but we do not regard the issue as material.

The next day, October 15, 1921, Schratter appeared before Judge Knox and applied for permission to go abroad in order to attend to business of vital personal importance. Schratter remained abroad until June, 1922, and on the 9th of that month appeared to plead to an indictment

which had in the meantime been found against the two corporations and himself. Meantime, Kramer, after much solicitation on his part, was given an opportunity to testify to the Grand Jury and to present to them other records and papers which he voluntarily produced. He was not indicted. After Schratter's return and Kramer's escape from indictment, the two corporations and Schratter filed the petition, denial of which by the District Court is now before us for review.

The books and papers brought before the Grand Jury and the court in this case were the books, records and papers of corporations of the State of New York. Such corporations do not enjoy the same immunity that individuals have, under the Fourth and Fifth Amendments, from being compelled by due and lawful process to produce them for examination by the state or Federal Government. Referring to the books and papers of a corporation, Mr. Justice Hughes speaking for this Court in *Wilson v. United States*, 221 U. S. 361, 382, said:

"They have reference to business transacted for the benefit of the group of individuals whose association has the advantage of corporate organization. But the corporate form of business activity, with its charter privileges, raises a distinction when the authority of government demands the examination of books. That demand, expressed in lawful process, confining its requirements within the limits which reason imposes in the circumstances of the case, the corporation has no privilege to refuse. It cannot resist production upon the ground of self-incrimination. Although the object of the inquiry may be to detect the abuses it has committed, to discover its violations of law and to inflict punishment by forfeiture of franchises or otherwise; it must submit its books and papers to duly constituted authority when demand is suitably made. This is involved in the reservation of the visitatorial power of the State, and in the

authority of the National Government where the corporate activities are in the domain subject to the powers of Congress." *Hale v. Henkel*, 201 U. S. 43, and *Wheeler v. United States*, 226 U. S. 478, are to the same point.

Counsel for appellants rely upon *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, but it has no application to the case before us. The *Silverthorne Case* was a writ of error to reverse a judgment for contempt against a corporation for refusal to obey an order of the court to produce books and documents of the company to be used to show violation of law by the officers of the company. This Court found that without a shadow of authority and under color of an invalid writ, the marshal and other government officers had made a clean sweep of all the books, papers and documents in the office of the company while its officers were under arrest. These documents were copied and photographed and then the court ordered their return to the company. A subpoena was then issued to compel the production of the originals. The company refused to obey the subpoena. The court made an order requiring obedience and refusal to obey the order was the contempt alleged. This Court held that the Government could not, while in form repudiating the illegal seizure, maintain its right to avail itself of the knowledge obtained by that means which otherwise it would not have had. In other words, we held that the search thus made was an unreasonable one against which the corporation was protected by the Fourth Amendment and which vitiated all the subsequent proceedings to compel production. There was nothing inconsistent with the *Wilson Case* in this ruling for, as we have seen in the passage quoted from the opinion in that case, a corporation can only be compelled to produce its records against itself by the demand of the Government expressed in lawful process, confining its requirements within limits which reason imposes in the circumstances of the case. It is to submit its books and

papers only to "duly constituted authority when demand is suitably made." In the case before us the demand was suitably made by duly constituted authority. In the *Silverthorne Case*, it was not. Here it was expressed in lawful process, confining its requirements to certain described documents and papers easily distinguished and clearly described. Their relevancy to the subject of investigation was not denied. As said in the *Wilson Case* (p. 376): "But there is no unreasonable search and seizure, when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced."

Objection is made that neither Kramer nor Schratter was called before the Grand Jury when they produced the books and papers in response to the *duces tecum*. That was not necessary. The subpoena only summoned the corporations to appear and produce the named documents and papers. There was no real *ad testificandum* clause in the subpoena because a corporation could not testify. It was expressly ruled in the *Wilson Case*, that the failure to put officers of the corporation on the stand in such a case did not in any way invalidate or destroy the lawful effect of the *duces tecum*.

Kramer says that he protested against the retention of the documents he had produced at the time because he was not called before the Grand Jury. At his own solicitation he was thereafter called before that body and testified and voluntarily produced other documents and papers, and never renewed his demand for the documents produced under subpoena until after the Grand Jury ignored the charge against him some eight months later. Schratter against the opposition of the District Attorney but with the consent of the court absented himself from the country for eight months and took no steps in respect to the produced documents and papers. Judge Knox

held that such conduct constituted a waiver of any irregularities in not calling these witnesses before the Grand Jury when the documents and papers were produced. If a waiver were needed, as we do not think it was under the *Wilson Case*, this clearly would have been sufficient.

Schratter joined with each corporation in asking a return of the documents and papers of that corporation on the ground that they might incriminate him. But the cases of *Hale v. Henkel*, 201 U. S. 43; *Wilson v. United States*, 221 U. S. 361, and *Wheeler v. United States*, 226 U. S. 478, show clearly that an officer of a corporation in whose custody are its books and papers is given no right to object to the production of the corporate records because they may disclose his guilt. He does not hold them in his private capacity and is not, therefore, protected against their production or against a writ requiring him as agent of the corporation to produce them.

Appellants cite the cases of *Boyd v. United States*, 116 U. S. 616; *Weeks v. United States*, 232 U. S. 383, and *Gould v. United States*, 255 U. S. 298, to support their contention that the proceedings complained of herein violate their rights under the Fourth and Fifth Amendments. Those cases were all unreasonable searches of documents and records belonging to individuals. The distinction between the cases before us and those cases lies in the more limited application of the Amendments to the compulsory production of corporate documents and papers as shown in the *Henkel*, *Wilson* and *Wheeler Cases*.

The order of the District Court is affirmed.